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FEDERAL COMMUNICATIONS COMMISSION

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F.C.C. 72-963

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re DIVERSIFIED COMMUNICATION INVESTORS, INC., LITTLEFIELD, TEX. For Certificate of Compliance	CAC-387

MEMORANDUM OPINION AND ORDER

(Adopted November 1, 1972; Released November 7, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND HOOKS ABSENT; COMMISSIONER REID DISSENTING.

1. On May 12, 1972, Diversified Communication Investors, Inc. filed an "Application for Certificate of Compliance and Request for Waiver" (CAC-387) for a new cable television system at Littlefield, Texas (population 6,738; 1970 U.S. Census). The proposed system will operate with the following Texas television signals: KCBD-TV (NBC), KLBK-TV (CBS), KTXT-TV (Educ.), KSEL-TV (ABC), and KMXN-TV (Ind., Spanish language), Lubbock: WFAA-TV (ABC) and KDTV (Ind.) Dallas (the signals of WFAA-TV and KDTV will be carried on a share-time basis); and KTVT (Ind.), Fort Worth. Public notice of this application was given June 2, 1972. On July 3, 1972, State Telecasting Company, Inc., licensee of Station KCBD-TV, Lubbock, Texas, filed a "Petition in Opposition" and Grayson Enterprises, Inc., licensee of Station KLBK-TV, Lubbock, Texas, filed an "Opposition to Application for Certificate of Compliance and Request for Waiver," both directed against a grant of Diversified's proposal.

2. Lubbock, Texas, is a smaller television market. The southeastern tip of the corporate limits of Littlefield (an area of 0.47 square miles which contains 31 persons) lies within 35 miles of the Lubbock reference point. As a result, Littlefield is entitled to carry only the limited signal complement authorized for a smaller television market. On the other hand, were it not for the fact that Littlefield's corporate limits go beyond the area of principal settlement,[1] Littlefield would lie outside all television markets and would be virtually unrestricted in the number and source of television signals it would be entitled to carry. In these circumstances, it seems appropriate to consider this a *de minimis* waiver situation, waive Section 76.5 of the Commission's Rules, and treat Littlefield as lying beyond all markets. The objecting stations argue predictably against possible adverse impact of a grant upon Lubbock stations but we find their arguments unpersuasive: the 31 persons within the 35 mile zone are *de minimis*, and there is no

[1] Figure 2, Exhibit A of Diversified's application is an aerial photograph which dramatically illustrates the situation.

showing that cable service beyond the 35-mile zone would pose a unique threat here.

In view of the foregoing, the Commission finds that a grant of the above-captioned application would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition in Opposition" filed July 3, 1972, by State Telecasting Company Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Opposition to Application for Certificate of Compliance and Request for Waiver" filed July 3, 1972, by Grayson Enterprises, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Application for Certificate of Compliance and Request for Waiver" (CAC–387) filed May 12, 1972, by Diversified Communication Investors, Inc. IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R–315

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
ERWIN O'CONNER TRADING AS ERWIN O'CONNER BROADCASTING CO., DAYTON, TENN.	Docket No. 18547 File No. BPH–6408
NORMAN A. THOMAS, DAYTON, TENN.	Docket No. 18548 File No. BPH–6479
For Construction Permits	

APPEARANCES

Erwin O'Conner, pro se; Lawrence J. Bernard, Jr., on behalf of Norman A. Thomas; *Gerald M. Zuckerman*, on behalf of Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

(Adopted November 2, 1972; Released November 7, 1972)

BY THE REVIEW BOARD: BERKEMEYER, NELSON, AND PINCOCK.

1. The above captioned, mutually exclusive applications for a new FM broadcast station in Dayton, Tennessee, utilizing channel 285, 104.9 MHz, were designated for consolidated hearing by Commission Order, FCC 69–503, published May 15, 1969 (34 Fed Reg 7728), on a limited financial qualifications issue as to Erwin O'Conner (O'Conner), a financial qualifications issue as to Norman A. Thomas (Thomas), a *Suburban* issue as to Thomas and a general comparative issue. The hearing was conducted before Administrative Law Judge Ernest Nash and the record closed September 30, 1971. Judge Nash in his Initial Decision, FCC 71D–101, released January 4, 1972 concluded that O'Conner had failed to establish his financial qualifications, that Thomas was qualified and that, therefore, granting his application would serve the public interest, convenience and necessity. Exceptions were filed by the Broadcast Bureau, urging denial of both applications. O'Conner filed a pleading entitled, Appeal from Initial Decision, which will be treated as his exceptions to the Initial Decision. Oral argument was heard by a panel of the Review Board on August 31, 1972. The Board has considered the Initial Decision in light of the record, the exceptions of the parties and the oral argument, and has concluded that neither applicant has established its financial qualifications. Both applications must therefore be denied. There were no exceptions directed to the Presiding Judge's disposition of the ascertainment of needs issue or to his failure to make a comparative evaluation of the two applicants. In view of our action in this Decision, neither of those issues is dispositive; therefore those issues will not be considered further in this Decision.

FINANCIAL QUALIFICATIONS—O'CONNER

2. O'Conner, in his application, proposed to construct his FM station and to operate it for one year at a total estimated cost of $30,000. He showed liquid assets of $15,800 consisting of cash on hand and a commitment for a bank loan then available to him. For the remaining $14,200, he proposed to rely on the sale of advertising. The Commission was not satisfied that his showing concerning the availability of advertising revenues was sufficient and the following issue was included:

"To determine whether O'Conner has available to him the additional $14,200 required to construct and operate his proposed station for one year and thus demonstrate his financial qualifications".

At the first prehearing conference which was held June 26, 1969, counsel for O'Conner stated that O'Conner still intended to rely on broadcast revenues for $14,200. At that conference, it was agreed that written exhibits would be exchanged September 3, 1969. O'Conner undertook to establish his financial qualifications by exchanging an exhibit showing that he would obtain approximately $17,000 from potential advertisers. In the exhibit, O'Conner included statements from some eighteen persons, each of whom indicated an intention to purchase various amounts of advertising from O'Conner's proposed station during its first year of operation. These statements were made on a form which was provided by O'Conner, and included a statement as to the prospective purchaser's intent to use the station and the amount of advertising which he would be willing to purchase. In addition, each form asked a series of questions including the name and nature of the business, the trading area of the business, and the amounts previously spent for advertising, whether the business had previously advertised on a broadcast station and the identity of that station, and the number of dollars so spent in each of the past three years. The form also elicited similar information as to advertising in newspapers and concluded by asking whether the prospective advertiser had examined O'Conner's technical proposal to compare his proposed coverage with the prospective advertiser's trading area. The amounts shown on these forms varied from a high of $4,000 a year to a low of $100.00 per year and totaled some $17,000. Each form was signed by the prospective advertiser but was not notarized.

3. Upon receipt of this exhibit, counsel for Thomas advised counsel for O'Conner that each of the prospective advertisers should be available in the hearing room for cross examination. Counsel for the Broadcast Bureau agreed that cross examination appeared to be necessary but expressed a hope that some arrangements could be worked out without requiring all of these witnesses to come to Washington, D.C. Between the exchange date and the commencement of the hearing, there was some discussion between counsel for O'Conner and counsel for Thomas concerning the possibility of taking depositions of O'Conner's financial witnesses. However, shortly before the hearing date, counsel for Thomas indicated that he would only be willing to participate in such deposition proceeding if O'Conner would pay his reasonable expenses incurred in a trip from Washington to Dayton, Tennessee for the purpose of taking the depositions and return to Washington. O'Conner refused to pay such expenses and on October

30, ten days before the hearing was scheduled to commence, he filed a petition for leave to amend his application. The proffered amendment reduced O'Conner's estimated construction and first year's operating expense from $30,000 to $22,000. This would be accomplished by: leasing the necessary technical equipment, doing necessary remodeling on a studio-transmitter building himself and relying upon members of his immediate family (father and brothers) to staff his station at salaries below those which he had originally planned to pay. He would then rely on liquid assets on hand and a bank loan for a total of $15,800 and three prospective advertisers for $8,000 to meet a total anticipated cash requirement of $22,000.

4. The hearing commenced as scheduled on November 5, 1969. O'Conner offered as exhibit No. 2 a financial showing based upon his amended proposal. Thomas and the Bureau objected to this offer on the ground that it varied from the application which was before the Presiding Judge. O'Conner argued that he had petitioned to amend and since his proposed amendment ran to a financial qualifications issue he should by virtue of Commission and Review Board actions in prior cases be permitted to amend. Thomas and the Bureau both took the position that they were entitled to oppose O'Conner's petition to amend, that their oppositions were not due for another five days, and that, even though the petition to amend was within the jurisdiction of the Presiding Judge, he was precluded from acting on that petition until the parties had been afforded an opportunity to oppose. O'Conner contended that, even though the parties were entitled to oppose, the Presiding Judge could nevertheless accept the showing based on the proposed amendment, and that, to require a showing based on the application with full knowledge that the applicant intended to modify it, was unreasonable. The Presiding Judge ruled that he would not act on the petition to amend until the parties had filed their oppositions, and that O'Conner would not be permitted to proceed with his financial showing based on the proposed amendment.[1]

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[1] The Presiding Judge, by Memorandum Opinion and Order, FCC 69M–1567, released November 28, 1969, denied O'Conner's petition to amend, essentially because it was untimely filed and good cause was not shown, as required by Section 1.522(b) of the Commission's Rules. In his Memorandum Opinion and Order, the Presiding Judge noted that the petitioner failed to meet any of the criteria for justification of post designation amendments set forth by the Review Board in *Erway Television Corp.*, 2 FCC 2d 248, 6 RR 2d 890 (1965), *i.e.*: it had not demonstrated that it acted with due diligence; that no modification of the issues would be necessary; that the proposed amendment was not required by the voluntary act of the applicant; that the other parties will not be unfairly prejudiced; and that the applicant will not gain a competitive advantage. The Presiding Judge particularly noted that the equipment supplier's letter bore a date of June 2, 1969, more than four months before the amendment was filed, and that the substance of the amendment would be likely to require addition or modification of issues in the proceeding. In view of these circumstances, the Presiding Judge concluded:

"It may be that greater latitude has been allowed in the case of acceptance of financial amendments than is true of other amendments. Nevertheless, this is a case in which the moving party has been so deficient in observing standards of due diligence and so remiss in adhering to standards of orderly and expeditious procedure as to require that his amendments be rejected. In addition, there is justification for the expectation that in the event these amendments were allowed, additional issues would have to be designated in this proceeding."

O'Conner appealed from that Order and the Review Board, by Memorandum Opinion and Order, FCC 70R–103, released March 19, 1970, 22 FCC 2d 140, denied O'Connor's appeal. In that document the Board gave careful attention to all of O'Conner's arguments but concluded, as did the Presiding Judge, that the applicant had not proceeded with due diligence to file its amendment and that to grant the amendment would disrupt and unduly delay the proceeding. No application for review was filed. O'Conner, on July 17, 1970, filed a petition for leave to amend which embodies essentially the same proposals as were included in his earlier tendered financial amendment. The petition was opposed by Thomas and by the Broadcast Bureau and denied by the Presiding Judge in a Memorandum Opinion and Order, FCC 70M–1166. No appeal was taken. Subsequently, on March 26,

O'Conner then elected to go forward with his proposal as set forth in his application and the exhibits which previously had been exchanged. Both the Bureau and Thomas objected to receipt in evidence of O'Conner's exhibit, identified for the record as No. 4, on the grounds that it was unverified hearsay and of no value whatsoever so long as the parties on whose statements O'Conner chose to rely were not made available for cross examination. However, the Presiding Judge ruled:

"Now, I will accept the exhibit on the basis that you have put it in for what it is worth, but I think you are already on notice that in this stage of the game, I would have difficulty finding more than $4,000 worth of advertising revenue of these exhibits. I am just putting that down as an outside amount."

The parties examined O'Conner at some length with respect to details of each of his purported advertising commitments.

5. In his Initial Decision, the Presiding Judge noted that O'Conner's Exhibit No. 4 had been received subject to opposition and with the special reservations as to its evidentiary usefulness. The Presiding Judge then concluded: "It is now determined that these statements are of no evidentiary value and must be disregarded as proof of O'Conner's qualifications." He further noted that 5 of the 18 potential advertisers who had indicated an intention to spend a total of $5,786 were ministers, and that O'Conner had made no attempt to determine whether these ministers had authority from their churches to purchase radio time. The Presiding Judge pointed out with respect to one church that there was record evidence that without permission of the church board, no such funds could be expended. He also noted that the largest potential advertiser, Totten Furniture, which proposed to buy $4,000 worth of advertising, is located on the southeast side of Chattanooga, a 45 minute drive from Dayton and that the company is owned by a personal friend of O'Conner; that the next largest potential advertiser, W. A. Shipley Basket Manufacturing Company, which proposes to spend $2,000 a year, is owned by a "relative of Mr. O'Conner" and during the three years 1966, 1967 and 1968, it spent only $1,000 per year for advertising, including no more than $300.00 in any one year for radio advertising; and that several other of the prospective advertisers appeared to have committed themselves to substantially larger advertising expenditures than they had spent in times past. The Presiding Judge further points out that O'Conner was obligated by issue No. 1 to show the availability of $14,200 in prospective advertising revenue; that he undertook to do this by relying entirely on unsworn written statements of various individuals and businesses; and that O'Conner declined to make these witnesses available for cross examination. Accordingly, he concluded that under these circumstances he had no choice but to disregard this evidence of financial qualifications proffered by O'Conner; that O'Conner had failed to

1971. O'Conner again petitioned for leave to amend. This amendment purported to show certain changes in his financial situation, particularly that he had sold his service station, thus improving his cash on hand position and changing his relationship with his father and brothers on whom he had intended to rely for operation of his proposed station. O'Conner urged that in view of the requirements of Section 1.65 the amendment should be accepted. The Bureau and Thomas again both opposed the petition for leave to amend and the Presiding Judge, by Order, FCC 71M–521, released April 9, 1971, denied the petition. No appeal was taken. On June 23, 1972, O'Conner again sought leave to amend his application. He sought to submit a "current balance sheet" with liquid assets of $8,500. Both the Broadcast Bureau and Thomas opposed the amendment. The Review Board, by Memorandum Opinion and Order, FCC 72R–219, released August 10, 1972, 37 FCC 2d, ——, —— RR 2d ——, denied O'Conner's petition for leave to amend. O'Conner did not apply for review of this action of the Review Board.

meet his obligation under issue No. 1; and that it was therefore necessary to deny his application.

6. O'Conner's appeal from the Initial Decision (which the Board is treating as his exceptions) does not comply with Section 1.277 of the Commission's Rules.[2] However, since O'Conner was not at this stage of the proceeding represented by counsel the Board has undertaken to ascertain his objection to the Initial Decision from this document. O'Conner contends that the Presiding Judge should have granted his October 1969 petition to amend or one of his other subsequently filed petitions to amend, all of which were denied (see Footnote 1, *supra*). He also contends that the Presiding Judge's statement at the time he admitted O'Conner's Exhibit No. 4 in evidence, see ¶ 4, *supra*, precludes him from completely disregarding that exhibit as a basis for his financial qualifications. Moreover, O'Conner argues that if he were required to bring all of his prospective advertisers to Washington, they would regard this action as harassment and be so resentful that under no circumstances could he obtain their support for his proposed FM station.

7. It must be borne in mind that O'Conner's application has not been amended.[3] He must therefore show that he can raise $14,200 in addition to the $15,800 consisting of liquid assets and a bank loan commitment which the Commission found to be available to him at the time the matter was designated for hearing. We must agree with the Presiding Judge that O'Conner has not shown that the necessary $14,200 will be available to him. The only evidence offered by O'Conner was his exhibit 4 which was composed of unverified statements of prospective advertisers described in ¶ 2, *supra*. The Presiding Judge, after considering O'Conner's testimony concerning the advertising commitments, adduced during cross examination, noted a number of facts, each of which in his judgment tended to decrease the significance of the advertising commitments. Viewing all of these facts together, we agree with the Presiding Judge's conclusion that O'Conner has failed to prove that he is financially qualified. His application must therefore be denied.

8. In oral argument before the Board, O'Conner referred to the Commission's Memorandum Opinion and Order in *Maumee Valley Broadcasting, Inc.* 33 FCC 2d 317 23 RR 2d 618 (1972) and the Review Board's Decision, *Henry D. Stephenson and Robert E. Stephenson* 33 FCC 2d 749 23 RR 2d 760 (1972). However, neither of these cases warrants a different conclusion than that reached by the Presiding Judge. Neither applicant in the Stephenson case relied upon proposed revenues to establish its financial qualifications. However, China Grove Broadcasting (China Grove) did rely on letters from

[2] Section 1.277 of the Commission's Rules reads in pertinent part as follows: "(a) Each exception to an initial decision or to any part of the record or proceeding in any case, including rulings upon motions or objections, shall point out with particularity alleged errors in the decision or ruling and shall contain specific references to the page or pages of the transcript of hearing, exhibit, or order if any on which the exception is based. Any objection not saved by exception filed pursuant to this section is waived. The exceptions should be concise and they will not be accepted if they contain argumentative matters or discussions of law. Lengthy excerpts of testimony, when desired, shall not be contained in the exceptions but shall be set forth in an appendix."

[3] O'Conner did not apply for review of the Board's denial of the Presiding Judge's refusal to grant his October 1969 petition to amend. The Board has again considered O'Conner's petitions to amend and finds no basis for disturbing its prior ruling on this matter.

24 local businesses in China Grove and a nearby small town in its effort, in response to the 307(b) Suburban Community issue, to show that China Grove would provide its principal economic support. The Presiding Judge concluded that since those letters were not supported by evidence that the writers had any knowledge of the station's proposed rates, programming, coverage or other information upon which advertising decisions are made or of the business and economic condition in China Grove, the letters could not be relied and that the China Grove application must be denied. In its decision, which for other reasons held that China Grove had failed to meet its burden of proof on the Suburban Community issue, the Review Board held that in the circumstances of that case, the letters of intent were entitled to more weight than was accorded them by the Presiding Judge. However, the Review Board clearly limited its finding to that case and took care to note that questions of financial qualifications were not involved. In the *Maumee Valley* Memorandum Opinion and Order, *supra* the Commission found that the applicant had established the availability of $80,000 consisting of cash on hand, a bank loan and prospective advertising revenue, to meet estimated construction and first year operation costs of $61,164.00. The finding with respect to advertising revenue was based on signed statements of local advertisers. The Commission, however, noted no defects comparable to those found by the Presiding Judge and the Review Board in the case now before us, and found the statements sufficient to justify a grant of the application without hearing. In the instant case, the Commission was not satisfied with the applicant's showing of estimated prospective advertising revenue and an issue concerning that matter was included in the proceeding. As noted above, after careful consideration of O'Conner's exhibits and testimony, neither the Presiding Judge nor the Review Board is persuaded that O'Conner will receive $14,200 in revenue during his first year of operation. Nor does *Rice Capital Broadcasting*, 17 FCC 2d 759, 16 RR 2d 332 (1969) require a different result. In that case the applicant was required to show $13,653.29 in prospective revenue. Applicant's exhibit, which was supported by affidavits of its principals, purported to show more than $25,000 in prospective revenue. While there were questions as to the availability of some of the prospective accounts raised by the counter testimony of the respondent, none of the inherent defects which the Presiding Judge found to discredit O'Conner's exhibit no. 4 were present. O'Conner has argued that the Presiding Judge is precluded from disregarding exhibit no. 4 by his observation at the time the exhibit was received in evidence that: "I would have difficulty finding more than $4,000.00 worth of revenue of these exhibits". This position is not well taken. The Presiding Judge was merely putting the applicant on notice that even without the benefit of the record developed on cross examination he had serious reservations as to the value of the exhibit. O'Conner has not challenged any of the factual observations upon which the Presiding Judge relied. However, he contends that the conclusion reached by the Presiding Judge is not warranted. As we have previously noted, we are satisfied that in the context of this proceeding the Presiding Judge's conclusion that O'Conner is not financially qualified to construct and operate the proposed station for one year is supported by the record

and by the Presiding Judge's findings of fact. Accordingly, O'Conner's application for a new FM broadcast station operating on 104.9 MHz at Dayton, Tennessee must be denied.

FINANCIAL QUALIFICATIONS—THOMAS

9. In his application, Thomas estimated that he would require $4,690 to construct his proposed station and $2,260 to operate it for one year without revenue. The Commission found his estimated construction costs to be reasonable but questioned the adequacy of his estimated operating expenses. It was also unable to ascertain that Thomas had sufficient liquid assets to meet his proposed construction and first year operating costs. Accordingly, a general financial qualifications issue as to Thomas was included in the proceeding.

10. In addition to Station WTND in Dayton, Thomas also owns Mountain View Broadcasting Company, the licensee of standard broadcast Station WJSO, Jonesboro, Tennessee, and Station WERN, Englewood, Tennessee. Thomas testified, and the Presiding Judge found, that he would operate his proposed FM station jointly with Station WDNT and that his only additional operating costs would be salaries for operators during the period the FM station operated when the AM station was not on the air. He expected that such operators could be employed for $2.00 per hour and that his total additional expenses for salaries during the first year would amount to $4,818. He believed that his existing record library and other program material sources were adequate to provide for the FM station, as well as the AM station. He anticipated that additional power costs would amount to about $840 per year and that maintenance supplies of about $420 would be required during the first year. Thus, his total anticipated operating cost for the first year would be $6,078. This coupled with the $4,690 anticipated construction expenses made his cash requirement during the first year of operation amount of $10,768.

11. Thomas submitted a document entitled "Balance Sheet" dated December 16, 1969. It showed cash on hand of over $7,000, accounts receivable of almost $10,000, notes receivable of almost $11,000 and land and buildings valued at $292,614. He also showed, what he later explained to be the net asset value of Mountain View Broadcasting Company at $150,000, Radio Station WENR at $50,000 and Radio Station WDNT at $50,000. He showed current liabilities of $79.00 and notes payable to banks $17,500 for a net worth of $456,943. Thomas stated that the net cash flow (the cash available to him after payment of all expenses and taxes) for station WENT was $4,174 in 1967, $9,731 in 1968, and $8,434 for the first eight months of 1969. Mountain View Broadcasting Company, which is solely owned by Thomas, had a net cash flow of $8,549 in 1967, $26,400 in 1968 and $16,432 for the first eight months of 1969. Station WENR showed a cash loss of $15,395 during 1967, $6,581 during 1968 and $2,526 during the first eight months of 1969. Thomas testified that operations at WENR indicate that by the end of 1969 that station would be at the break even point.

12. On cross examination it became apparent that the "Balance Sheet" of Norman A. Thomas which was submitted as part of his financial exhibit was somewhat less than complete. For instance, it did

not include mortgages on his home in the amount of $24,000 and a mortgage on some rental property in the amount of $8,000, which in combination required monthly payments of $514.50 per month. Nor did his financial showing include any income and expense statements either for Thomas personally or for any of his operating broadcasting stations. Moreover, financial statements which would enable the Commission to determine the obligations and the demands which might be made on the cash flow of those stations were not submitted for either of the three operating stations. Furthermore, it became apparent that the item listed as notes payable to the bank in the amount of $17,500, consisted of two 90-day notes. Thomas, when queried concerning these notes, testified that he did not regard these notes as current liabilities since he had been doing business with the local bank for over 40 years and the bank had never called a note on him. On each due date, the bank had accepted the interest and renewed the note at his convenience or if he chose to do so he retired some of the principal and negotiated a new note for the balance due.

13. The Presiding Judge found that Thomas' calculation of anticipated expense was reasonable in view of the proposed joint operation with his AM station which would permit him to obtain additional work from his existing employees and keep to a minimum the necessity for additional salaries. The Presiding Judge also found that Thomas would require only $4,690 (the cost of construction) in a lump sum and that the balance of the necessary capital might be taken from the various operating stations as required during the year. He then concluded that while there might be questions raised as to Thomas' financial qualifications, Thomas was operating a small essentially profitable business, and that in these circumstances the Presiding Judge would resolve the doubts in Thomas' favor and conclude that the necessary funds would be available to him.

14. The Bureau finds no fault with Thomas' showing as to cash required but contends that the balance sheet submitted by Thomas as amplified by his testimony on cross examination does not reflect Thomas' true financial condition, and that the record as it is presently constituted does not afford a basis for determining that Thomas is financially qualified. Particularly, the Bureau urges that by any reasonable tests, the bank notes must be treated as current liabilities. The Bureau also contends that we cannot rely on the cash flow from Thomas' stations even though they are wholly owned by Thomas, unless that cash flow is supported by balance sheets and operating statements which show net worth, current income and expenses.

15. In the context of this proceeding, Thomas is required to submit evidence upon which the Commission can base a finding that he is financially qualified to construct and operate his proposed station for one year. This, Thomas has failed to do. We accept the Presiding Judge's finding that Thomas will need $10,768. However, as the record now stands, it is impossible to find that Thomas will have this sum available to construct and operate his proposed FM station for one year without reliance on income. His balance sheet shows cash on hand of $7,283.13, accounts receivable $9,937.55 and notes receivable of $10,819.85. His other reported assets consist of land and buildings and his interest in three operating AM stations. The same balance sheet

shows current liabilities of $79.63, 90 day notes payable to banks $17,500, and a net worth of $456,943.00. It is well established that in the absence of a special showing of liquidity, accounts and notes receivable cannot be relied upon to establish financial qualifications.[4] Moreover, as noted earlier in this Decision, the notes payable to the bank must be regarded as current liabilities. Thus, Thomas' current liabilities, as shown by his "balance sheet", exceed his liquid assets by more than $10,000. Nor can we rely on "cash flow" from Thomas' existing stations. Thomas has supplied no balance sheets, operating statements or other financial information which would enable us to determine whether the cash flow generated by these stations would in fact be available for the construction and operation of the proposed station. Nor can we rely on the $456,943.00 net worth figure presented by the balance sheet. It is clear from Thomas' testimony that the balance sheet is not a complete and accurate statement of his financial condition. We have no way of knowing what part of the net worth consists of good will or other intangibles or what other liabilities and their terms of payments might be outstanding. The Board can properly and efficiently exercise its function only when the applicant's evidence is complete enough to support the ultimate determination. The Board should not have to comb the record, as it has found necessary here, to ascertain necessary basic facts. *Cf. Saginaw Broadcasting Co.* v. *Federal Communications Commission*, 68 App. D.C. 282, 96 F. (2d) 554 (1938). Without such basic information we simply cannot ascertain Thomas' true financial condition. Therefore, based on the record before us concerning Thomas' application for a new FM station in Dayton, Tennessee, we cannot, as did the Presiding Judge, conclude that viewed as a small businessman engaged in what are essentially profitable enterprises, and that Thomas can be expected to have the construction and operating funds required for his proposal. Rather, based on the record before it, the Review Board is unable to conclude that Thomas will have the necessary liquid assets to construct and operate his proposed new FM station for one year without reliance on advertising revenue. Therefore, the Board concludes that Thomas has not established, pursuant to issue no. 2 that his financially qualified to construct and operate his proposed station for one year. His application must therefore be denied.

16. Accordingly, IT IS ORDERED, That the application for a new FM broadcast station operating on 104.9 MHz at Dayton, Tennessee, filed by Erwin O'Conner tr/as Erwin O'Conner Broadcasting Company. File No. BPH 6408, Docket No. 18547, IS DENIED.

17. IT IS FURTHER ORDERED, That the application for a new FM broadcast station operating on 104.9 MHz at Dayton, Tennessee, filed by Norman A. Thomas, File No. BPH–6479, Docket No. 18548, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DEE W. PINCOCK,
Member, Review Board.

[4] *Miami Broadcasting Corporation*, 9 FCC 2d 694, 10 RR 2d 1037 (1967), *Vista Broadcasting Co., Inc.*, 18 FCC 2d 636, 16 RR 2d 838 (1969), *Seaboard Broadcasting Corporation, et al.* 24 FCC 2d 259, 261, 19 RR 2d 538 (1970).

F.C.C. 71D-101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ERWIN O'CONNER TRADING AS ERWIN O'CONNER BROADCASTING CO., DAYTON, TENN. NORMAN A. THOMAS, DAYTON, TENN. For Construction Permits	Docket No. 18547 File No. BPH-6408 Docket No. 18548 File No. BPH-6479

APPEARANCES

Stephen A. Gold, Esq., on behalf of Erwin O'Conner tr/as Erwin O'Conner Broadcasting Co.; *Lawrence J. Bernard, Jr., Esq.*, on behalf of Norman A. Thomas; and *Gerald M. Zuckerman, Esq.*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER ERNEST NASH

(Issued December 30, 1971; Released January 4, 1972)

PRELIMINARY STATEMENT

1. These mutually exclusive applications were designated for hearing by the Commission upon the following issues: (Memorandum Opinion and Order, F.C.C. 69-503, released May 12, 1969):

1. To determine whether Erwin O'Conner has available to him the additional $14,200 required to construct and operate his proposed station for one year and thus demonstrate his financial qualifications.

2. To determine the amount reasonably required by Norman A. Thomas to operate his proposed station for one year without reliance on revenues and whether he has available to him the necessary funds for construction and first-year operation of his proposed station to thus demonstrate his financial qualifications.

3. To determine the efforts made by Norman A. Thomas to ascertain the community needs and interests of the area to be served and the means by which the applicant proposes to meet those needs and interests.

4. To determine which of the proposals would on a comparative basis better serve the public interest.

5. To determine in the light of the evidence adduced pursuant to the foregoing issue, which if either of the applications for construction permit should be granted.

2. Conferences were held on June 26, 1969, March 2, 1971 and June 18, 1971, and hearing sessions were held on November 5 and 6, 1969 and on September 22, 1971 and the record was closed on September 30, 1971.

FINDINGS OF FACT

The Financial Qualifications of Erwin O'Conner

3. In its designation order the Commission questioned whether the advertiser income from which Erwin O'Conner expected to meet part of his financial requirements would in fact be available. He was called upon to furnish proof as to the actual availability of his expectations regarding advertiser income.

4. O'Conner sought to show the availability of the $14,200 by submitting signed statements from 18 persons who indicated that they intended to purchase various amounts of advertising on O'Conner's proposed station during the first year it operated. These statements were in the following form:

"This form is for the purpose of obtaining information as to prospective revenues in the immediate Dayton, Tennessee, area for an FM station to be established in this city. The expression of willingness indicated below is not intended to be a binding commitment upon this signatory, but on the other hand, does represent his honest intention at this time of using the proposed station's facilities, barring unforeseen circumstances.

"In the event an FM station is established in Dayton, Tennessee, which would serve the immediate area, I would be interested in advertising over the station during the first year of its operation in the approximate amount of $----------.

"In support of my financial ability to advertise in the amount indicated, should a contract for the purchase of that amount of time be signed. I am submitting the answers to the following questions in the spaces provided below each question."

5. Attached to each statement were two pages of "Interrogatories" which were also signed by the potential advertiser. The interrogatory form was as follows:

1. What is your name and business address?
2. What is the nature of your business?
3. Please define the "trading area" of your business, that is to say the area from which you expect to draw your clientele.
4. What were the total yearly amounts that you spent on advertising in all media during each of the following years: 1966, 1967, and 1968?
5. Have you ever advertised your business on any broadcast station?
6. If the answer to Question 5 is yes, please identify the station, and whether that station was an AM, FM or TV station.
7. If the answer to Question 5 is yes, please indicate the total yearly amounts in dollar figures of advertising which you purchased on each station during each of the following years: 1966, 1967, and 1968.
8. If the answer to Question 5 is no, please indicate whether you have ever been approached by any radio station, at any time, for purpose of purchasing time on the station. Please identify each station which so approached you.
9. If you were approached by any radio station to purchase advertising, and you refused, please indicate the reason for your refusal.

10. Have you ever advertised your business in any newspaper, periodical or other printed medium during the years 1966, 1967, and 1968?

11. If the answer to Question 10 is yes, please identify the newspaper, etc. and indicate the total yearly amount of advertising which you purchased in these publications during the years 1966, 1967, and 1968.

12. If the answer to Question 10 is no, then please indicate whether you have ever been approached by any newspaper, periodical or other publication for the purpose of your purchasing advertising space in these publications.

13. If the answer to Question 12 is yes, and you refused to purchase such advertising, please indicate the reason for your refusal.

14. Have you ever signed an indication of intention to purchase advertising on Mr. O'Conner's proposed facility, and if so, did you investigate Mr. O'Conner's technical proposal to determine the range of the proposed station, or for any other reason?

15. If you examined Mr. O'Conner's technical proposal, did you compare the proposed range of the station to the area which you consider to be your trading area?

6. These completed forms showed amounts ranging from $100 to $4,000 as the advertising expenditures during the first year of operation promised by those who completed the forms. None of the people who signed the forms appeared at the hearing for cross-examination although counsel was requested to produce them. These statements were accepted with expressed reservations as to their evidentiary usefulness. It is now determined that these statements are of no evidentiary value and they must be disregarded as proof of O'Conner's financial qualification. A brief description of the type of information contained in these statements follows for record purposes only.

7. Five of the eighteen potential advertisers are ministers who have indicated they might spend a total of $5,786 for time on the proposed station. However, O'Conner made no attempt to determine whether any of these ministers had been given authority to purchase radio time by the governing body of their churches. Rev. Center of the First Baptist Church of Dayton cannot spend church funds without the approval of the church's vestry.

8. O'Conner was instructed by his attorneys to have the commitments and interrogatories signed under oath before a notary public. He failed to do so.

9. *Totten Discount Furniture Co.*—This company spent over $12,000 for advertising in 1968, $2,000 of which was spent on newspaper advertising. Of the remaining $10,000, "most" was spent in TV advertising. Thus, it would be reasonable to assume that about $4,000 was spent on radio advertising. This money was spent on most of the Chattanooga AM stations, of which there were at least six (WDEF, WDOD, WDXB, WGOW, WMOC, and WNOO). According to O'Conner's exhibit, this company will also spend $4,000 on his station alone. The Totten store is located on the southeast side of Chattanooga and is at least a 45-minute drive from Dayton. Mr. Totten is a personal friend of Mr. O'Conner's.

10. *W. A. Shipley Basket Mfg. Co.*—This company proposes to spend $2,000 per year on Mr. O'Conner's station alone, while in 1966, 1967, and 1968, it spent only $1,000 per year on advertising in all media. The most he has ever spent on radio in one year is $300. Mr. Shipley is related to Mr. O'Conner and assisted him in attaining "commitments" from four other potential advertisers.

11. *Reverend Hayden Center.*—Rev. Center signed up for $1,200 worth of advertising. His church did not buy any time on radio in the previous three years. He is a new pastor.

12. *Modern Way Cleaners.*—This store indicated a willingness to buy $1,000 worth of advertising time from O'Conner. It spent a total of $355 on radio advertising for three years (1966, 1967 and 1968), and no more than $300 on all media during any one of these years.

13. *Les and Ritch Records.*—Is located in Chattanooga and has never advertised on radio. This store is shown as willing to purchase $600 worth of advertising. O'Conner's station will not serve any area closer than 30 miles from Chattanooga.

14. *Dayton Motor Express and Welch Concrete Products.*—Neither of these businesses has ever purchased advertising time in any media. Neither appears to sell the type of consumer goods or services normally advertised on radio. They have indicated they will purchase $1,000 of advertising time.

15. *Rev. V. H. Wilkey.*—Rev. Wilkey has not used radio in the past. He is shown as willing to purchase $1,200 worth of advertising on O'Conner's station. Rev. Wilkey's church is in Graysville, Tennessee, which will not receive primary service from O'Conner's proposed station. Rev. Wilkey is related to O'Conner.

16. *Johnson's Hardware Co.*—This company is shown as willing to purchase $500 per year of advertising from O'Conner's proposed station. It spent a total of only $521 on radio for the three years 1966, 1967 and 1968.

17. *Morgan's Florist.*—This store is shown to be willing to purchase $500 of advertising from O'Conner. It spent a total of only $150 in radio advertising in 1967, 1968 and 1969.

Thomas' Financial Qualifications

18. Thomas has estimated his total first-year operating expenses to be as follows:

Salaries	$4,818
Power	840
Maintenance	420
	6,078

These projections were computed on the basis of a proposed combined operation with standard broadcast station WDNT, Dayton, Tennessee, which the applicant has owned and operated for over 10 years.

19. WDNT is a daytime only station operating on 1280 kc. with 1 kw. power. The proposed FM facility will be operated from the combined studio-transmitter-antenna site of WDNT, with its antenna mounted on the WDNT tower. Sales, administrative and engineering

duties for the new station will be performed by the existing staff of WDNT. It is anticipated that these services will be minimal during the first several years of operation due to the fact that the FM operation will duplicate about 62.5% of WDNT's programming. Entertainment programming will be produced from recorded music from the record library now on hand at WDNT and the records normally received by a station free of charge. The news, public affairs and other programs to be broadcast by the station will either be simulcast from WDNT or produced by WDNT's existing staff and facilities without further expense to the applicant. Thus, the only additional staff needed to operate the proposed station will consist of announcers for the six hours per day during which the proposed station will operate separately from WDNT. It is the applicant's plan to employ one or more part-time announcers to cover this daily six-hour period. Based on his experience in operating WDNT, the applicant anticipates that these announcers can be employed at the rate of $2.00 per hour. Thus, his expenses for additional staff during the first year of operation will be about $4,818 ($12.00 per day times 365 days, plus 10% for miscellaneous items such as payroll taxes).

20. It is anticipated that the only other expenses to be incurred will be for electric power to operate the additional transmitter and studio equipment and for maintenance supplies for the new equipment. Based on present experience at WDNT, the applicant estimates that additional power costs will be about $70 per month or $840 during the first year and that maintenance supplies will be about $35 per month or $420 during the first year of operation.

21. By adding the first year's operating expenses to the construction costs of $4,690 which the Commission had found to be reasonable, the applicant must demonstrate that he will have $10,768 available to be found qualified under Issue No. 2. Only the $4,690 request for construction of the station will be needed in a lump sum. Funds needed for operating expenses can be obtained on a monthly basis throughout the first year of operation. In order to show that these sums will be available, the applicant relies on his balance sheet, dated September 15, 1969, which shows in excess of $7,000 in cash and on the net cash flow of three existing radio stations which he owns.

22. Net cash flow after provision for all taxes for Station WDNT was $4,174.00 in 1967, $9,731.00 in 1968, and $8,434.97 for the first eight months of 1969. The applicant also owns 100 percent of Mountain View Broadcasting Co., licensee of standard broadcast station WJSO, Jonesboro, Tennessee. Net cash flow after provision for all taxes for Station WJSO was $8,549.00 in 1967, $26,400.00 for 1968, and $16,432.86 for the first eight months of 1969. The applicant is the licensee of standard broadcast station WENR, Englewood, Tennessee. WENR began operations during 1967 and sustained a cash loss of $15,395 during that year and a loss of $6,581 during 1968. For the first eight months of 1969, WENR showed a cash loss of $2,526.33. Projecting this figure over a twelve-month period, it is reasonable to assume that WENR's cash losses will not be in excess of $3,789.41 for 1969. Thus, it is reasonable to assume that the applicant will have available operating funds in excess of the six to seven thousand dollars needed to operate the station.

23. On cross-examination questions were raised concerning Thomas' ability to provide the $4,690 needed to construct proposed station. It was established that the applicant was personally liable on two mortgage notes, one in the amount of $24,000 and the other in the amount of $8,000, and that these notes were being retired at the combined rate of $514.50 per month. However, the applicant receives rent of $450 per month from one of the properties covered by a mortgage and he receives $250 per month on a note receivable listed on his balance sheet. The applicant's businesses are apparently listed on the balance sheet at their net worth figures and current liabilities of these businesses are not separately listed. However, since two of the radio stations listed are owned by corporations, Mr. Thomas is not personally liable for current liabilities, and, additionally, the stations appear to have incomes sufficient to take care of any such liabilities.

24. It was also established that Thomas owed the American National Bank in Chattanooga, Tennessee, $17,500 and that this debt was evidenced by two 90-day demand notes. However, Thomas testified that he had been doing business with this bank for over 40 years and that the bank had never refused to extend similar notes during that period of time. It should also be noted that Thomas has fixed assets in land and buildings with a net value in excess of $195,000 and that these holdings are not subject to any mortgages.

Suburban Issue

25. Thomas presented evidence concerning his efforts to discover the needs of the area at the hearing sessions on November 5 and 6, 1969. Thereafter, on January 30, 1970, Thomas petitioned the Examiner for leave to amend his application in order to show the additional steps he had made to comply with the Commission's *Suburban* requirements subsequent to the hearing. In support of his petition, the applicant cited the Commission's *Notice of Inquiry* in Docket No. 18774, the so-called "Primer on Ascertainment of Community Needs" proceeding, which was released on December 19, 1969. The Examiner granted the petition in an Order released February 19, 1970, FCC 70M–250, and the record was reopened for the receipt of further evidence on this issue. Subsequently, however, the Commission on March 26, 1970, released its *Interim Procedures on Community Survey Showings*, 18 RR 2d 1923, which directed that all hearing cases involving *Suburban* issues be stayed pending resolution of the *Primer* proceeding. Accordingly, the Examiner issued an Order on March 23, 1970, postponing all procedural dates in this proceeding until further notice. In paragraph 79 of the "Primer on the Ascertainment of Community Needs" as finally adopted on February 23, 1971, 27 FCC 2d 650, the Commission permitted all applicants in pending hearing cases to amend their applications within 90 days, and, in accordance with this permission, Thomas filed an amendment to his application on May 24, 1971. The Examiner accepted the amendment by Order released June 14, 1971 (FCC 71M–964).

109–016—72——2

Characteristics of the Area to be Served by the Proposed Station

26. The station proposed by Thomas will serve an area of 165 square miles containing a 1960 population of 10,802 within its 1.0 mv/m contour. It will serve all of the City of Dayton and a large part of surrounding Rhea County, as well as small portions of Hamilton and Meigs Counties. Inasmuch as the proposed station will not serve any population centers with more than 250 people in either Hamilton or Meigs County, the applicant does not plan to offer programming specifically designed to serve the needs of either of these counties. However, since many of the problems—needs which can be served by radio are the same throughout the service area, programs designed to serve some of the needs of Rhea County will also aid citizens of the other counties. Programs designed to serve agricultural needs and programs concerning job placement and job training opportunities are examples of this type of service.

27. The 1970 Census indicates that Rhea County's population is 17,202, an increase of 8.4% from the 1960 figure of 15,863. The population is 96.1% white, 3.7% black and about 0.2% other races. Rhea County's population is 25.4% urban. About 90% of the County's dwellings are single family homes, 65% of which are owner-occupied. The City of Dayton's 1970 population was 4,089, a growth of about 500 people since 1960.

28. In 1960, Rhea County had 3,858 families, almost 52 percent of whom had annual incomes of less than $3,000 and less than 3 percent of whom had incomes in excess of $10,000. The median years of education for Rhea County residents 25 years or older was 8.4 years in 1960 and only 22 percent had completed high school. There are approximately 5,000 people in the Rhea County work force and the 1963 Census figures indicated that 2,310 were employed in manufacturing. A recent survey indicates that the County's 14 major manufacturers employ 2,726 people. It is estimated that there are about 14 small manufacturing firms employing a total of about 150 people. Eleven of the fourteen major industries are located in Dayton and the other three are in Spring City, a town of about 1,000, fifteen miles north of Dayton. Ten of the fourteen manufacturers produce textiles, mostly in the form of finished wearing apparel and the large majority of their employees are women. Women compose 61 percent of the work force of the fourteen major manufacturers located in Rhea County. Two of the area's plants have been organized by labor unions, and, after a period of strife surrounding the attempts to organize about two years ago, labor-management relations have been adequate, and no major work stoppages have resulted in recent years. The slowdown in the general economy and the competition domestic textiles receive from Japanese imports have resulted in temporary reductions in the work force at many of the plants in the area during the past twelve to fifteen months. Census figures for 1964 also indicate that about 400 people are employed in Rhea County retail establishments, 18 in wholesale trade and 84 in service businesses.

29. The 1964 Census of Agriculture indicates that 34% of Rhea County's land is devoted to farming, as compared to 40% in 1957. The number of farms decreased almost 25% from 1957 to 1964. It is esti-

mated that this trend is continuing and that there are now less than 400 farms in the County. Over 97% of the farms are operated by owners and 91% of the family income for farm families came from nonfarm employment in 1964. The total population living on Rhea County farms in 1964 was 1,600.

30. The Rhea County school system has 4,838 students and 144 teachers in 10 elementary and 2 high schools. Recreational facilities include a 9-hole public golf course, a public swimming pool and tennis courts, as well as fields for youth baseball and football leagues. Nearby Lake Chicamauga affords a 40,000 acre recreational facility for fishing and water sports.

31. Dayton has an elected mayor, 4 councilmen and a full-time appointed City Manager. There are 7 full-time policemen and 3 patrol cars. The city fire department employs 3 full-time firemen and 16 volunteer firemen and has 2 fire trucks. Rhea County is governed by a county court of 16 elected magistrates.

Contacts with Community Leaders

32. In December, 1969, and January, 1970, the applicant conducted a survey of community leaders in Dayton and surrounding areas. The leaders contacted and the community needs-problems related in the interviews are set forth below:

(1) Mr. John W. Tolliver, Rhea County Director of the Tennessee Department of Public Welfare, indicated that the area suffered from a lack of adequate housing and that, in order to solve this problem, more cooperation between the County Court and the Dayton Housing Authority was needed. He also indicated that inadequate preparation had been made for relief in the event of emergencies.

(2) Mr. Clinton Hichman, a Negro member of the local Draft Board, indicated that, from the point of view of his activities, the largest single problem in the area was a lack of communication among the general public.

(3) Mr. Paul M. Levengood, Mayor of the City of Dayton, felt there was a need for more understanding among young people concerning the workings of government. He also stated that the antagonistic political factions in the community should cooperate in solving the area's problems. A program of public information by responsible public officials would, in his opinion, enhance understanding and cooperation among the citizens. He further pointed to the need for adult education, indicating that technical training was needed for persons who did not finish high school. He also felt that there should be publicity concerning the programs already available in the area.

(4) Rev. Mitchell O. Pettus, Minister of the First United Methodist Church in Dayton, indicated that the most important need in the area was to unify the diverse elements in the community. He felt that there was too much competition between the cities in the county, i.e., Spring City and Dayton, and that the county should work as a unit to bring in new political and economic programs.

(5) Mr. E. H. Sargent, plant manager of the John Oster Manufacturing Co., Dayton's largest employer, indicated a real need for more technically trained and educated employees. He stated that the area's

public school systems should increase and expand their technical training programs. He also cited the need for better housing facilities and suggested that government controls on the lending of construction money should be loosened to permit more construction of housing.

(6) Mr. E. L. Tips, County Agricultural Agent for Rhea County, indicated that there was a need to educate people concerning preferred agricultural practices. He also stated that there is a need to develop the county's natural resources, and, further, that low income groups and young people should play a greater part in community government activities.

(7) Mr. Condon Lawson, Principal of the Dayton Elementary School, indicated a need for additional funds to construct new classrooms. He also cited the need for more housing and industry.

(8) Mr. Clyde Roddy, City Manager of Dayton, Tennessee, indicated a need for more industry to provide local employment. He also cited a need for more housing, indicating that the city should participate in the Federal Housing Program. He further pointed out that there was a need to consolidate and expand technical training programs.

(9) Mr. T. Jack Robinson, Chairman of the Rhea County United Fund, indicated that there was a need for education of and communication with the public concerning the services rendered by members of the United Fund. He indicated that there was a need for a broader public education program concerning these organizations. He further pointed out that the largest community problem was one of education; he felt the entire educational process should be vastly improved.

(10) Mr. J. E. Powell, Recorder for the City of Graysville, indicated a need for new industry to provide local employment. He also cited the need to expand and improve educational facilities, indicating that more federal and local funds should be made available for this purpose.

(11) Mr. Gary Young, Mayor of the City of Graysville, indicated there was a need for new industry to provide local employment. He cited the need for a new sewage system so that the town could provide for the needs of large industry. He also indicated a need for additional public housing for the aged and low income population and suggested that federal funds be provided for such construction.

(12) Rev. Chester Bowles, Minister of the Mount Olive United Methodist Church in Dayton, one of the city's Negro leaders, indicated a lack of interest and cooperation among the people concerning mutual problems. He felt there was a need for closer relationships to solve these problems.

(13) Mr. Jack Ritchie, Principal of the Rhea County Central High School, cited the need for development and expansion of vocational training programs and a revision of the current college preparatory course of instruction. Mr. Ritchie also cited the need for better transportation in the area and a requirement for overall plans for city and county development. He also indicated that there was a need for a community center to house community activities.

(14) Dr. Ernest A. Forsten, Vice-Chairman of the Rhea County School Board and Chief of Staff of the Rhea County Hospital, pointed out the inadequacies of the local school facilities and indicated that

there was a dire need to consolidate city and county schools and establish a new vocational high school. He also pointed out the lack of skilled labor in the area and indicated that the establishment of a vocational school was the answer to this problem.

(15) Mr. Ben Purser, Executive Vice President of the Dayton National Bank, indicated a need for industrial diversification which would bring more jobs to the area. He cited the need for vocational training facilities. He also indicated that there was a need for better housing, the renewal of the central business district, and a full-time radio station.

(16) Mr. Robert B. Norris, President of the Dayton Rotary Club, cited needs for more youth recreational opportunities, more classrooms, a vocational training center, more housing, and, finally, an improvement in local communications media which are now limited to a daytime only radio station and a weekly newspaper.

(17) Mr. W. R. Jaco, Manager of the local office of the Tennessee Department of Employment Security, indicated that there was a need to expand local industry to provide additional employment. He also cited the need for vocational training in the schools, for more and better housing and for better recreational facilities.

(18) Mr. Philip M. Cooper, Rhea County Public Health Officer and Sanitarian, indicated a need for improvement in the treatment and disposal of garbage and a need for more general public education concerning environmental health problems. He also cited the need for a better education system, more modern water and waste treatment plants, and an air pollution prevention program to govern local plants.

(19) Mr. Howard L. Taylor, Superintendent of Rhea County Schools, cited the need for better educational facilities, especially a new consolidated high school.

(20) Sheriff Ola Harris, Sheriff of Rhea County, Tennessee, indicated that there was a lack of understanding between the public and law enforcement agencies. He also discussed the need for better recreational facilities for technical training.

(21) Mr. William G. McPheeters, a Dayton attorney, indicated a need for better education and new industry for full-time male employment.

(22) Mr. R. A. Ladd, Superintendent of the Meigs County Schools, indicated there was a need for clear radio reception and communication in his area. He also cited the lack of adequate funds with which to construct and operate the schools.

(23) Sheriff Oscar Womac of Meigs County indicated there was a need for more and better training personnel in the Sheriff's Department of Meigs County.

(24) Mr. W. B. McKennzie, Chairman of the Meigs County Court (the representative county governing body), indicated there was a need to inform the people of the county on government activity in the area. He also cited the problem of juvenile delinquency and the need for better school facilities.

(25) Mr. R. S. Lillard, Mayor of Decatur, Tennessee, indicated a need to increase the capacity of the city's water and sewer system in order to attract new industry.

(26) Mr. Earl C. Gunter, Agent for the Meigs County Agricultural

Extension Service, indicated a need to raise farm income in the area. He felt that this could be accomplished through better farm planning. Mr. Gunter also indicated that there was a need for vocational training programs and better career guidance in the schools.

(27) Mrs. Mary M. Buchanan, Director of the Meigs County Department of Public Welfare, indicated there was a need for a broader information outlet for the Department and other county agents. She stated that better radio service might help serve this problem.

(28) Mr. S. E. Mullins, Hamilton County Agricultural Agent, indicated that there was a need to increase the yield for local crops and livestock. He indicated that the present low yields keep the farm population at a low income level. He cited an improved educational program as a means to overcome these problems.

(29) Sheriff H. O. Evatt of Hamilton County indicated a need to better inform the public in the outlying areas of the county concerning law enforcement problems.

(30) Mr. Homer E. Nelson, Director of the Hamilton County Welfare Department, indicated there was a need for an FM radio station which would inform Hamilton County listeners concerning the problems of their neighbors.

(31) Mr. Ervin M. Evers, a teacher at Sale Creek High School, indicated there was a need for new school construction and the appropriation of funds to carry out such improvements. He also cited the need for more industry to provide local employment.

(32) Mr. James H. Lee, owner of Lee's Grocery Store in Sale Creek, indicated a need for better educational facilities for the town. He also cited the need for flood control in the local creek.

33. Norman A. Thomas operates Radio Station WDNT in Dayton, and, in the course of developing programming for that station, his staff communicates with community leaders in the area on a daily basis. From this contact with the area and its problems, Thomas has determined that no significant changes have occurred in the community's problems and needs since the interviews with community leaders were taken in 1969 and 1970. In order to confirm this determination additional interviews were conducted with the following listed community leaders in the spring of 1971:

(1) R. J. Bennett, President of the Bank of Spring City, Spring City, Tenn.

(2) J. F. Standifer, Insurance Agent, professional musician and resident of Spring City, Tenn.

(3) Rev. Chester Bowles, Pastor of the predominantly Negro Mount Olive United Methodist Church, Dayton, Tenn.

(4) Ola Harris, Sheriff of Rhea County.

(5) E. L. Tipps, Dayton County Agricultural Extension Leader.

(6) Elmer Kelly, Former General Manager and Vice President of Kayser-Roth Corporation in Dayton, Tenn.

(7) Johnny A. Gross, Printer, Sale Creek, Tenn.

(8) Martel Gamble, Businessman, Spring City.

(9) Johnny T. Roddy, Member Rhea County Court.

(10) Luther H. Wilkinson, a Negro member of the Dayton Police Force.

(11) Edward L. Morgan, Insurance Agent, Dayton.

(12) Harold C. Robbins, University of Tennessee Agricultural Extension Service.
(13) Bill R. Houston, President of Dayton Chamber of Commerce.
(14) Raymond B. Veasey, Jr., Vice President of the Dayton Bank & Trust Co.
(15) John R. Collins, Member of the Tennessee Highway Patrol.
(16) Earl Jenkins, Chief Deputy Sheriff of Rhea County.
(17) Robert B. Norris of the Chamber of Commerce Industrial Committee.
(18) J. M. Abel, Businessman.
(19) Mr. Howard Taylor, Superintendent of Rhea County Schools.
(20) Mrs. Reba B. Taylor, Head Nurse and Superintendent of Rhea County Health Department.
(21) Mr. Condon Wasson, Principal of Dayton Elementary School.
(22) Mr. John Tolliver, Director of the Rhea County Welfare Office.
(23) Mr. W. Terry Hill, President of the Bryan College Student Council.
(24) Mrs. Audrey J. Pittman, President of Local 1769 of the Textile Workers Union of America.
(25) Dr. Theodore Mercer, President of Bryan College and the leader of a group organizing a united fund charity campaign for Rhea County.

34. The needs-problems mentioned in these interviews were as follows:

(1) *Education.*—Consolidation of the city and county school systems was suggested as a means to solve many of the area's public education problems. A plan for consolidation has been worked out and is awaiting final approval. There are also plans to establish a vocational school to train workers for industry. There is substantial overcrowding at the Dayton elementary school where the former auditorium and mobile homes are being used for classrooms. There is also a problem in attracting and holding good teachers for the schools because of the low pay they receive. The schools tend to rely too much on student teachers from Bryan College. There is also a need for adult education to provide basic literary skills to the substantial number of illiterates in the Rhea County area.

(2) *Housing.*—The need for housing for low and moderate income families was the most mentioned need in all three of the surveys undertaken by the applicant. Substantial progress has been made on a plan to revitalize the downtown area and replace an existing "shanty town" with public housing. Financing plans are now being formulated with the aid of state and local officials. However, there is an acute need for much additional housing, and the private sector will have to supply it.

(3) *Recreation.*—Although some athletic facilities are available, organized programs are inadequate. Young people have "nothing to do" and there are almost no programs for other age groups. The city has recently acquired a large tract of land from the TVA and is developing a larger recreation area with tennis courts, etc., which will be open in the summer of 1972.

(4) *Industry.*—The need to attract additional and more diversified industry is perhaps the key to the problems of the area. Diversified industry and higher paying jobs would draw skilled workers who in turn would be able to stimulate the construction of new housing. However, without adequate housing, recreational programs, vocational training schools and skilled workers, new industry is reluctant to move into the area.

(5) Other problems mentioned were: drug abuse among college and high school students; the need for more policemen to regulate traffic, particularly at school crossings; the need to improve county and city roads; the need to interest people, especially those with low incomes and welfare recipients in the family planning clinic of the health department; the need for a better system of solid waste disposal; the need for better understanding and relationships between the community and Bryan College; and the need to organize more workers into unions. Finally, Dr. Mercer commented at some length on the need to re-establish a united charitable fund campaign. Such a campaign was organized each year in the Dayton area for many years but lapsed two years ago. Dr. Mercer heads a group trying to organize a campaign for the entire county and he stated that the rivalry between the Spring City (northern) and Dayton (southern) areas of the county makes it difficult to get everyone to agree on the campaign and the distribution of the money collected.

Survey of the General Public

35. During late 1969 a staff member of Station WDNT was instructed to conduct a survey of people selected at random from the Dayton area telephone directory. Forty persons were called and asked to describe the "most important community problem in the area in which you live and work." The names of the people called and the problems they described are set forth below:

(1) Mrs. W. A. Becker, Jr., Dayton, indicated a need for more recreation for young people. She also indicated a need for a youth center and a theatre.

(2) Mrs. Grover Smith, Spring City, indicated a need for recreation for young people.

(3) Mrs. Max Owens, Spring City, indicated that something should be done about the drug problems. She also indicated that parents should provide recreation for young people and stated a desire to have panel discussions between parents and children.

(4) Mrs. Clifford Burns, Dayton, indicated a need for more factories.

(5) Mrs. Leonard Pack, Spring City, indicated that an ordinance should be passed to keep bicycles off sidewalks in the business district.

(6) Mr. Miller True, Spring City, indicated that local facilities such as water supply are not adequate and that Federal grants should be made to improve schools.

(7) Mrs. Coy Goodson, Graysville, indicated that Graysville needs a better fire department.

(8) Mrs. Ralph James, Dayton, indicated that roads need to be improved in Mountain View and that streets need to be widened in down-

town Dayton. She also indicated that the town needs more parking spaces.

(9) Mrs. Charles Ellis, Dayton, indicated a need for buses for city schools.

(10) Mrs. Frank Forbes, Dayton, indicated a need for better law enforcement. She also indicated a need for more money so that additional men could be hired.

(11) Mrs. John Ritchey, Dayton, indicated a need for more recreational facilities.

(12) Mrs. Darrell Sweet, Dayton, indicated a need for school and faculty improvements. She also felt that schools need to be consolidated.

(13) Mrs. Thomas Walker, Dayton, indicated a need for new leaders to run the town.

(14) Mrs. Glenn Langley, Jr., Dayton, indicated a lack of city money to do things with.

(15) Mr. Walter Morris, Dayton, indicated a lack of good roads.

(16) Mr. Lloyd Nelson, Dayton, indicated that he felt people need to be brought closer to God and the church.

(17) Mrs. Henry Wilbank, Dayton, indicated a need for stores to be remodeled.

(18) Mrs. Tom Wiggins, Dayton, indicated a need for better roads.

(19) Mrs. T. A. Stuart, Dayton, indicated that she felt more neighbors need to go to church.

(20) Mrs. Sherman Snyder, Dayton, indicated a need for more recreational facilities for young people.

(21) Mrs. Knight Dillard, Dayton, indicated a need for repairs to stores and stated that Dayton needs to be cleaned up.

(22) Mrs. C. F. Capps, Dayton, indicated that Dayton needs more factories and that the community needs to be more receptive to industry.

(23) Mrs. Hubert Keith, Dayton, indicated that Dayton needs more industry for older women. She also indicated a need for a nursery for children of all races.

(24) Mrs. R. D. Kerr, Dayton, indicated that there was a poverty problem.

(25) Mr. George Marler, Dayton, indicated a need for more phones in Dayton.

(26) Mrs. Ralph Porter, Dayton, indicated a need for an FM radio station. She also indicated a need for more recreational facilities for the young people.

(27) Mrs. Guy Runyan, Dayton, indicated that the roads need to be improved.

(28) Mrs. Billy Sherrill, Dayton, indicated that the roads need to be improved in Evansville.

(29) Mr. Earl Ladd, Spring City, indicated that there was a lack of communication between the county government and the people. He also indicated a need for school consolidation.

(30) Mrs. Dean Norman, Dayton, indicated that Dayton needs to organize a clean-up campaign.

(31) Mr. Dan Ralston, Graysville, indicated a need for more factories.

(32) Mrs. Bernard Switter, Dayton, indicated a lack of educational facilities. She felt a broader educational program is needed.

(33) Mrs. Amanda Ehmig, Dayton, indicated a need to consolidate the schools.

(34) Mrs. Vicky Welch, Dayton, indicated a lack of educational facilities. She also felt that schools should be consolidated.

(35) Mrs. Imogene Roberts, Dayton, indicated a lack of community involvement. She felt that education would solve that problem.

(36) Mrs. Kathy Faylower, Dayton, indicated a lack of recreation facilities.

(37) Mr. John Firick, Dayton, indicated a need for an FM radio station. He also indicated a need for a clean-up campaign.

(38) Mrs. Susan Shepard, Dayton, indicated a need to consolidate the schools.

(39) Mrs. Reba Keylon, Dayton, indicated a need for better working conditions in the factories. She also indicated that the factories need to establish rules to be followed by everyone and not just a few.

Programs Proposed to Serve the Needs and Problems of the Area

36. *World Wide Religious News* and *Church Service.*—These two programs will serve the need for increased church attendance and a greater awareness of moral and spiritual values in dealings between human beings. The religious news will list local, as well as regional and international, events and will be broadcast in two fifteen-minute segments each Sunday. A local church service will be broadcast each Sunday morning.

37. *County Agent's Report* and *Market Report.*—These programs will attempt to meet the discovered need to increase farm income by distributing information on modern farming methods and price information so that farmers can sell their goods at the highest available prices. The *County Agent's Report* will also include information on such topics as health, nutrition, personal hygiene, conservation and water pollution. The *County Agent's Report* will be a fifteen-minute program, broadcast 2 days per week, and a five-minute *Market Report* will be broadcast each weekday.

38. *Today's Comment.*—This forty-minute program will be broadcast each weekday and will be devoted to *current* topics of interest in the area. In addition to a listing and description of the activities of various civic, fraternal and professional organizations in the area, the program will feature interviews with local community and government officials and leaders concerning matters such as school consolidation and construction plans, the attraction of new industry to the area, the establishment of adult and vocational education programs in the schools, plans to refurbish the downtown business area and construct new housing for low and moderate income citizens, the development of new recreation facilities and programs, the establishment of a United Fund charity and the distribution of the funds collected among various agencies and groups. Occasionally listeners will be asked to telephone their views on the subject under discussion to the people being interviewed and where the topics being discussed have generated differing opinions among the various groups in the community, every effort will

be made to present all of the responsible viewpoints on the subject. The applicant believes that the type of discussion which can be generated by this type of program will help solve the general need voiced by many persons for more "understanding," "cooperation" and "communication" among the citizens of the area and between the local government and the citizens. Many of the *Today's Comment* programs will devote the entire forty minutes to a public affairs topic. In any event, at least ten minutes of each program will be devoted to public affairs topics.

39. *University of Tennessee Reports.*—This program is produced by the University in Knoxville and often includes a discussion of topics such as air and water pollution, waste disposal, the attraction of new industry and the improvement of educational facilities. This fifteen-minute program will be broadcast three times each week.

40. *Social Security Administration.*—This five-minute program will be broadcast three times each week. The program is produced by an official of the Social Security Administration in Chattanooga who comes to the station each week. The program contains information concerning the assistance available to people under programs administered by the agency. This publicity will help meet the need for better health care and help to break the poverty cycle by attracting eligible people to enroll in existing programs.

41. *Community Roundtable.*—This sixty-minute program to be broadcast once each week will concentrate on long-range efforts to solve the area's problems as opposed to the current emphasis to be placed on the topics discussed on *Today's Comments.* Topics such as the need for local and regional planning, the need for expanded sewer and water treatment facilities and waste disposal, general efforts by the community and the Chamber of Commerce to attract new industry, the acquisition of recreation facilities and the development of recreation programs for young people, the need for cooperation between local government and existing industry in such areas as prevention of air and water pollution and the establishment of vocational training programs for new employees.

42. *Job Corner.*—This short two-to-four minute program will be broadcast twice each day. It will list job and vocational training opportunities available in the area. It is hoped that the program will help relieve the twin problems of unemployment among unskilled workers and vacant jobs in industry for skilled workers.

43. *Bulletin Board.*—This five-to-ten minute program will be broadcast each afternoon and will list community, civic and government events scheduled for that evening and the following day. It is hoped that this program will stimulate the citizens of the area to cooperate in planning and executing programs designed to solve the area's problems.

44. *Swap Shop.*—This fifteen-minute program will be broadcast each day. The program, now carried on WDNT, allows listeners to purchase second-hand equipment, household utensils and other items that are no longer useful to other listeners. WDNT has found that this program serves a real need of low income groups who can often obtain serviceable items at a fraction of their retail prices.

45. *Special Programs.*—

(*a*) During the period immediately preceding each election, both primary and general, the station will produce and broadcast special programs containing a discussion of election issues, analyses of the election and statements from candidates. Frequent election progress reports will also be relayed to the station's listeners during the campaigns and on election day. This type of programming will stimulate the electorate to take an interest in their government and will promote understanding and cooperation between government and citizen.

(*b*) Each year, special programs appealing to the area's youth will be produced in cooperation with the local chapters of the Future Teachers of America, the Future Farmers of America, the 4–H Club and other organized youth groups. The programs will foster communication between these youth groups and the community and will stimulate youth to join these activities which promote vocational guidance and training.

(*c*) The station will install remote pickup facilities at the County Fair and broadcast special programs on each afternoon the fair is open. These programs will contain information on modern agricultural methods and home economics as well as recreational and entertainment features.

(*d*) Each year the station will cooperate with the local March of Dimes in producing the "Radio Auction," a program on which items donated by local merchants and listeners will be auctioned off over the air. This program will be broadcast on a yearly basis for five consecutive days from 1:00 p.m. to 5:00 p.m. The applicant also plans to broadcast a special program in conjunction with the "kick-off" of the planned United Fund charity drive.

46. *Non-Commercial Spot Announcements.*—The station will make its personnel and facilities available to local charitable, service and government organizations for the production of spot announcements publicizing programs and activities designed to solve community problems. The publicity generated by such announcements is extremely helpful in such activities as United Fund and other charitable campaigns, in establishing support for bond issues to finance programs such as the construction of school and recreation facilities, for promoting health care programs such as family planning clinics, chest X-ray and dental services, and dispensing information regarding adult and vocational educational programs.

Biographical Backgrounds

47. Norman A. Thomas has resided in the Chattanooga area since 1925 when he established standard broadcast station WDOD, the first broadcast station in Chattanooga. The original WDOD installation provided power of only 50 watts and this power was increased to 500 watts in 1926 and 2500 watts in 1929. The station was one of the original outlets for the Columbia Broadcasting Network in 1929. Thomas founded the WDOD Playhouse, a 600-seat theater where musical programs were produced and broadcast over WDOD and the CBS Network. In 1942, WDOD changed its transmitter location and increased its power to 5,000 watts.

48. Thomas volunteered for the Navy in December 1942 and became an Aviation Volunteer Specialist assigned to the Radio Instruction Squadron at Pensacola Naval Air Station. He later became Executive Officer for the Naval Air Training Command and helped develop radio facilities and techniques for "blind" flying. He was discharged from the Navy as a Lieutenant Commander in 1945.

49. In 1945 he put WDOD–FM on the air and later in 1946 and 1947 he was instrumental in developing remote control equipment for operation of WDOD and WDOD–FM by microwave transmission. These developments led to the modern systems of remote control now authorized by the Commission and used by numerous broadcast stations.

50. Thomas disposed of his interests in WDOD and WDOD–FM in 1956, and, in December 1957, he established WDNT at Dayton, Tennessee. In 1958 he established WJSO at Jonesboro, Tennessee and in 1967 he constructed and began operations of WENR at Englewood, Tennessee.

51. At present Thomas devotes almost all of his working time to the operation of Stations WDNT and WENR. WJSO is operated by his son, Norman A. Thomas, Jr.

52. Thomas spends at least three hours each day on the affairs of WDNT. All major program decisions are made by him after consultation with the General Manager, Jack S. Pullin. Thomas and Pullin communicate directly with each other by telephone at least twice every day and Thomas drives the thirty odd miles to Dayton on the average of about twice a week. During the early months of the operation of the proposed FM station, Thomas anticipates that he will devote probably about 30 hours per week, almost all of his time, to the station and its programming. Once the station has been on the air for five or six months, he anticipates that he will spend about four or five hours per day on the operation of WDNT and the FM station and the remainder of his time on WENR and WJSO. This plan is approximately similar to the time he devoted to the initial operation of WENR in Englewood, Tennessee, which was established in 1967.

53. Erwin O'Conner is currently a resident of Chattanooga, Tennessee.

54. He began in broadcasting in January 1956 at Radio Station WAPO, Chattanooga, Tennessee, as record librarian, working two hours per day filing records. In the latter part of 1957, he began working for Radio Station WDEF, Chattanooga, also in the same capacity in the afternoons.

55. In 1958 a vacancy occurred in the traffic department at WDEF and he left WAPO to assume this fulltime position. His duties consisted of scheduling announcements and programs, making up copy books, and correspondence with the NBC network. In 1959 he returned to WAPO, and, for a brief time, worked as record librarian until the program director resigned, at which time he assumed this position which he held until 1964 with the exception of military service in 1960–61. As program director, he had the responsibility for scheduling commercial and public service announcements, scheduling and handling programs, correspondence between the ABC and MBS networks, liaison between the station and the public, general office routine, and filling in various departments during vacations, vacancies, etc.

During this period he gained experience in bookkeeping, copywriting, news gathering, and station management. In 1964 he transferred to the engineering department as a control operator working the control board, remote broadcasts, etc. At this time he obtained a third-class radio-telephone license with the element nine endorsement. In January 1965 the station ceased using operators and he was assigned to local news and part-time sales. A month later he was assigned to full-time sales calling on local business establishments for advertising. In July 1966, WAPO was sold to Martin Theatres, owners of WTVC–TV, Chattanooga, and he moved to that station as an engineer working audio. Last year he became a fulltime video switcher which is his present assignment.

56. He has had eight years military service including active and reserve duty. For seven years he was assigned to the Public Information Section as broadcast specialist, information specialist, and newspaper editor, and held a rank of Sergeant First Class when he transferred to the Stand-By Reserve. He originated a 15-minute weekly radio program for Reserve Recruiting and ran it on Radio Station WFLI for two years. Besides this program, he handled most of the newspaper releases, radio and TV releases, the unit newspaper, and acted as liaison between the unit and the news media in Chattanooga.

57. During his employment at WAPO, he worked at the Orange Grove School, Moccasin Bend Psychiatric Hospital and various schools promoting the station's image in the community. He also worked closely with Goodwill Industries, Better Business Bureau, United Fund, Chamber of Commerce, Employment Security and other agencies on their publicity campaigns.

58. In the event that he receives a grant of the FM station, he intends to terminate his present employment and devote full-time to the new station. Of course, from the time of grant until the station goes on the air will be an interim period, and he will maintain his present position during that period.

Coverage

59. The applications of Erwin O'Conner Broadcasting Co., and Norman A. Thomas are mutually exclusive since both request a new Class A FM broadcast station at Dayton, Tennessee, to operate on 104.9 MHz (Channel 285A). O'Conner proposes to use 923 watts effective radiated power and an antenna height above average terrain of 337 feet; Thomas will employ 3 kilowatts effective radiated power and an antenna height above average terrain of 198 feet.

60. Dayton, Tennessee, has a 1960 population of 3,500 persons and is the county seat of Rhea County (pop. 15,863).[1] The city, located in southeastern part of the state about 30 miles northeast of Chattanooga, is not a part of any urbanized area. Dayton has only one broadcast facility, namely, WDNT(AM) 1280 kHz, 1 Kw, Day.

61. O'Conner's proposed transmitter site is located near the center of the city of Dayton and, because of terrain irregularities, the station's 1.0 mv/m contour would extend from 3.9 miles to 5.6 miles to include 5,831 persons in an area of 62 square miles.

[1] Population figures herein reflect 1960 U.S. Census data.

62. Stations WDEF–FM in Chattanooga, Tennessee, and WCLE–FM in Cleveland, Tennessee, provide FM service (1.0 mv/m or greater) to all of the area within the proposed 1.0 mv/m contour both day and night and WDOD–FM and WLOM–FM in Chattanooga serve at least 75% of the area. Altogether, there are from two to four FM services available in any one portion of such area distributed as follows:

FM services	Population	Area (sq. mi.)
Two	60	6.4
Three	47	5.1
Four	[1] 5,724	

[1] Includes 3,500 persons in Dayton.

All four of the above FM stations serve Dayton both day and night with a signal of at least 1 mv/m.

63. Four AM Stations, namely, WRKH Rockwood, WSM in Nashville, WFLI in Lookout Mountain, and WDNT in Dayton, Tennessee, provide daytime primary service (0.5 mv/m or greater) to all of the rural area within the proposed station's 1.0 mv/m contour. Three other AM stations (WDEH, WBAC, and WCLE) serve less than 25%. In the aggregate these stations provide the proposed rural service area with from four to six AM services. Only WSM provides primary service to all the rural area at night. Dayton, the sole urban place within the proposed station's 1.0 mv/m contour, receives daytime primary service (2.0 mv/m or greater) only from WDNT, the local AM station. An AM nighttime primary service is not available to the city at night.

64. Considering combined aural services (AM plus FM), there are from six (4 AM; 2 FM) to ten (6 AM; 4 FM) services available daytime in any one portion of the rural area within the proposed station's 1.0 mv/m contour. A minimum of three (1 AM and 2 FM) and a maximum of five (1 AM and 4 FM) aural services are available in any one portion of the rural area to be served at night. The availability of aural service at night is as follows:

Aural services	Population	Area (sq. mi.)
Three (1 AM and 2 FM)	60	6.4
Four (1 AM and 3 FM)	47	5.1
Four (0 AM and 4 FM)	3,500	5.0 (Dayton)
Five (1 AM and 4 FM)	2,224	50.5

Dayton receives one AM and four FM services daytime and four FM services nighttime.

65. Thomas' proposed transmitter site is located about one mile southwest of Dayton.[2] Similar to the O'Conner proposal, terrain irregularities will limit the proposed 1.0 mv/m contour extension to 3 miles in a northwesterly direction with a gradual increase to 10.5

[2] WDNT (AM) in Dayton is licensed to Norman A. Thomas. The FM antenna will be side mounted on the WDNT tower.

miles in a southeasterly direction. The 1.0 mv/m contour will include 10,802 persons in an area of 165 square miles. Dayton is the only urban place within this contour. The reach of the 1 mv/m contour is such that it will encompass approximately 75% of the area within O'Conner's proposed 1.0 mv/m contour. Conversely, O'Conner's proposed 1.0 mv/m contour will include about 25% of the area within the Thomas 1.0 mv/m contour.

66. Stations WDEF–FM, WDOD–FM, and WLOM–FM in Chattanooga and WCLE–FM in Cleveland, Tennessee, provide FM service (1.0 mv/m or greater) to all of the 10,802 persons within the proposed station's 1.0 mv/m contour day and night.

67. Three AM stations, namely, WSM Nashville, WFLI in Lookout Mountain, and WDNT in Dayton, Tennessee provide daytime primary service (0.5 mv/m or greater) to all of the rural area within the proposed station's 1.0 mv/m contour. Additionally, WRKH Rockwood, Tennessee, serves at least 75% of the area and WBAC, WGOW, WDOD, WCLE, WDEH, WENR, and WLAR serve lesser portions. Combined, these stations provide from four to six AM services in any one part of the rural area. At night the rural area within the proposed contour is furnished a primary service only by WSM, the Nashville station.

68. There are a minimum of eight and a maximum of thirteen aural services (AM plus FM) available daytime to any portion of the rural area within the proposed station's 1.0 mv/m contour. At night four stations serve 3,500 persons residing in Dayton and five serve the remaining 7,302 persons in the rural areas. As noted, Dayton receives one AM and four FM services daytime and four FM services nighttime.

Conclusions

1. Erwin O'Conner was required under Issue #1 to show the availability of $14,200 required to assure construction and operation of his proposed facility. O'Conner relied upon statements from various individuals and businesses undertaking to purchase advertising from his facility. These statements were unsworn and were not supported by the presence at the hearing of any of the persons involved in these promises. In addition, many of the statements are inherently improbable. Under these circumstances, the Hearing Examiner has no choice but to disregard this evidence of financial qualification proffered by O'Conner and to conclude that O'Conner has failed to meet his burden under Issue 1. It will, therefore, be necessary to deny his application and it will be so ordered.

2. Thomas relies mainly upon the cash flow from his existing licensed broadcast operations to meet his financial qualification issue. Viewed as a small businessman engaged in what are essentially profitable enterprises, we may conclude that Thomas can be expected to have the construction and operating funds required for his proposal. Thomas has one losing business enterprise. This loss is more than balanced out by the return he is realizing from his other financially remunerative operations. The overall value of his fixed assets appear to be more than adequate to cover his outstanding debts and there does appear to be enough available quick assets to cover his current debt

needs. While it may be possible to create doubt regarding Thomas' financial viability, it is reasonable, under all circumstances, to resolve these doubts in his favor. This we are disposed to do and thereby we reach the conclusion that he has made an adequate showing to satisfy his burden under Issue 2. It is concluded that Thomas has shown that he will have available the funds necessary to construct and operate his proposed station.

3. Thomas amended his application to conform his showing as to efforts made to ascertain community needs and interests so as to satisfy the requirements made by the Commission in the *Revised Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d, 650, 21 RR 2d 1507, released February 23, 1971. He has made the requisite showings required by the *Primer* as to the nature of the community and the needs which community leaders and residents of the area consider important. Thomas has also outlined the programs he proposes to broadcast to satisfy these needs and requirements. If he performs as he promises, he will serve his area with programs that meet the Commission's requirements. It is concluded that Norman A. Thomas has met his burden under Issue 3.

4. In view of the conclusion that Erwin O'Conner has not met his burden to show that he would be financially qualified his application must be denied. There is, therefore, no need to make the comparative evaluation called for by Issue 4.

5. On the basis of the findings and conclusions herein, it is concluded that Norman A. Thomas is the sole applicant in this proceeding who is fit, willing and able and that grant of his application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of Erwin O'Conner tr/as Erwin O'Conner Broadcasting Co., IS DENIED and the application of Norman A. Thomas (BPH–6479), 104.9 MHz, Dayton, Tennessee, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
ERNEST NASH, *Hearing Examiner.*

109-016—72—3

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
CITIZENS COUNCIL OF AMERICA, BRIDGETON, Mo.
Concerning Refusal To Accept Paid Advertisement by Station KPLR

NOVEMBER 7, 1972.

Mr. GORDON LEE BAUM,
Citizens Council of America,
4090 Weskan,
Bridgeton, Mo.

DEAR MR. BAUM: This will refer to your letter dated October 18, 1972 concerning Television Station KPLR's refusal to accept the following paid advertisement of your organization:

Organization is the key to victory * * * and, the Citizens Council is *one* organization in America today which believes it can help meet the challenges that confront the majority of Americans.

This national organization provides a voice whereby the so-called "silent majority" can be heard on the vital issues.

The Citizens Council is helping to establish private schools to offset school deterioration, defining issues which identify candidates for public office, and conducting continuous and intensive white voter information and registration campaigns.

The Citizens Council supports local law enforcement agencies in controlling the wave of crime unleashed by the misnamed "civil rights" revolution, and helps organize property owners for personal safety, and for the protection of neighborhood property values. * * *

Join today. * * *

And, identify with other patriotic Americans from the Atlantic to the Pacific who believe in states rights and racial integrity. For further information contact. * * * (Name and address of organization) Your letter questions the propriety of that refusal.

The question of whether a broadcast licensee may refuse to accept paid commercials dealing with controversial issues was decided by the Commission in *Business Executives' Move for Vietnam Peace* (*BEM*), 25 FCC 2d 242 (1970). In that ruling, the Commission held that a broadcasting station is not a common carrier under the Communications Act of 1934 and that therefore the licensee is not obligated to sell broadcast time to all groups or individuals seeking to advertise their social, political or editorial views. Noting that under the Communications Act, Congress has charged the licensee with the responsibility for judgments as to the particular material to be broadcast and that if the licensee were required to broadcast any matter brought

to him, a wholly different and chaotic broadcasting system would result, the Commission also concluded that a policy of refusing to sell time for controversial public issue advertisements was not inconsistent with the First Amendment as applied to the broadcast media.

This decision was appealed and the Court of Appeals reversed the Commission's ruling in *Business Executives' Move for Vietnam Peace* v. *F.C.C.*, 450 F. 2d 642 (1971), holding that:

* * * a flat ban on paid public issue announcements is in violation of the First Amendment, at least when other sorts of paid announcements are accepted. We do not hold, however, that the planned announcements of the petitioners or, for that matter, of any other particular applicant for air time must necessarily be accepted by broadcast licensees. Rather, we confine ourselves to invalidating the flat ban alone, leaving it up to the licensees and the Commission to develop and administer reasonable procedures and regulations determining which and how many "editorial advertisements" will be put on the air.

The court also ordered the Commission to develop reasonable guidelines to aid broadcasters in determining whether to accept editorial advertisements.

However on February 28, 1972, the Supreme Court granted certiorari and also stayed the mandate of the lower court. Thus, the Court of Appeals' decision voiding a flat ban on paid public issue announcements by licensees is in abeyance and the Commission's initial ruling upholding such licensee refusals represents existing Commission rule and policy applicable pending the final decision of the Supreme Court.

The Commission's present rule and policy in this area of paid public issue advertising should be distinguished from the "equal opportunities" provisions of Section 315 of the Communications Act of 1934 which apply to broadcast appearances by legally qualified candidates for public office, and the Commission's personal attack rules under the fairness doctrine, which entitle an individual or group personally attacked during the discussion of a controversial issue of public importance to broadcast time to respond to such attack. In its ruling in the *BEM* case, the Commission held that aside from such cases of personal attacks and candidate appearances and endorsements, no particular group or individual has a right of access to broadcast his views or opinion. It should also be noted in this regard that while the fairness doctrine requires a station that presents one side of a controversial issue of public importance to afford a reasonable opportunity for the presentation of contrasting views in its overall programming, it leaves decisions as to whether such an issue has been presented and, if so, how best to present contrasting views on that issue to the reasonable, good faith judgment of the licensee. The Commission will review the licensee's decisions only as to whether the licensee, under the circumstances, appears to have acted reasonably and in good faith.

It is apparent from its text that your proposed advertisement seeks to present the views of your organization on public issues concerning civil rights, law and order, and race relations. Your letter also states that Station KPLR–TV has refused to accept your advertisement pursuant to a standing policy against broadcasting paid public issue announcements of private groups and individuals. Upon the basis of the

information you have submitted and for the foregoing reasons, the Commission is unable to conclude that the licensee improperly refused to accept and air your advertisement.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20054

In Re Complaint by
ROBERT L. SASSONE, SANTA ANA, CALIF.
Concerning Fairness Doctrine Re Stations WRC–TV and KNBC–TV, National Broadcasting Co.

NOVEMBER 3, 1972.

ROBERT L. SASSONE, ESQ.,
900 North Broadway, Suite 725,
Santa Ana, Calif.

DEAR MR. SASSONE: This is in reference to your letter dated June 29, 1972 concerning coverage of the topic of population in the programming of Stations WRC–TV and KNBC–TV which are licensed to National Broadcasting Co., Inc. We regret our delay in response which is due to the heavy volume of mail received and our staff limitations.

In your letter, you assert that WRC–TV and KNBC–TV have violated the fairness doctrine in their coverage of the population issue in that viewpoints challenging theories of over-population and resource diminution and advocating continued population growth have not been adequately represented.

When a complaint under the fairness doctrine is made to the Commission, the Commission expects a complainant to submit specific information indicating: (1) the station or network involved; (2) the specific issue or issues of a controversial nature of public importance presented by the station; (3) the date and time when the issue or issues were broadcast; (4) the basis for the claim that the issue or issues were controversial issues of public importance, either nationally or in the station's local area at the time of the broadcast; and (5) reasonable grounds for the conclusion that the licensee has presented only one side of the issue or issues and has failed to afford a reasonable opportunity for the presentation of contrasting views in its overall programming.

Your letter appears to fail to provide a sufficient factual basis for concluding that Stations WRC–TV and KNBC–TV have failed to observe the requirements of fairness with respect to their overall programming on the topic of population. You recite a number of issues—the world population, resource, food, water, energy, space, birth rate situations—and generally allege that they are controversial and that the licensee has unfairly presented these issues in its programming. However, your complaint fails to indicate the specific programs in which such issues were discussed, the particular views or sides which were presented, and the specific views or sides which the stations have

allegedly ignored in such programming. The WRC–TV and KNBC–TV program mailers which you have submitted only generally describe the subject matter and scope of programs dealing with many aspects of the topic of population and do not sufficiently identify the specific issues and views which may have been presented. Without more detailed information regarding the particular issues and views broadcast by the stations and the specific grounds for belief that only one side of any controversial issue or issues of public importance has been presented in the stations' overall programming, the Commission cannot properly review any allegation of the licensee's failure to comply with the fairness doctrine.

It should be emphasized that the selection and presentation of specific program material are responsibilities of the station licensee, and under provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material. However, if a station presents one side of a controversial issue of public importance, it is required under the fairness doctrine to afford a reasonable opportunity for the presentation of contrasting views. The fairness doctrine does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming. It is therefore the responsibility of the licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. Both sides need not be presented in a single broadcast or series of broadcasts, and no particular person or group is entitled, as a matter of right, to appear on the station. In this regard, it is the paramount right of the public to be informed which dictates the fairness duties of the licensee, not the right of any individual to broadcast his views.

The fact that the stations in question have not presented the views of a particular demographer opposed to theories of over-population and resource diminution and favoring continued population growth would not, in and of itself, indicate that the licensee had failed to comply with the fairness doctrine in its population programming. Similarly, if the licensee has made a reasonable, good faith effort, overall, to present contrasting views on any population issues of controversy and public importance covered in its programming, the Commission would not substitute its judgment for that of the licensee in matters of spokesman selection and program format. The programming summaries which you have submitted would indicate an apparent attempt by the stations to present divergent views in a discussion of the population topics covered, including the views of the three major religions in opposition to abortion and public population control measures, views emphasizing birth rate decline, and theories stressing new sources of food, shelter, and other life-support necessities and innovative methods for optimum resource utilization.

In view of the foregoing, the Commission recommends that you first bring your specific complaint to the licensee's attention. If after contacting the licensee, you are not satisfied that it has fulfilled its obligations and the Commission is so advised in pertinent factual de-

tail, as set forth above, it will, in appropriate cases, request a statement from the licensee and provide the complainant with an opportunity to comment on the licensee's statement if the complainant so desires. Thereafter, on the basis of all available information, the Commission will attempt to determine whether the licensee's actions under the circumstances violated any Commission rule or policy.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 72-952

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. AND MRS. JOHN EIGHMEY AGAINST WMT,
CEDAR RAPIDS, IOWA

ORDER

(Adopted October 26, 1972; Released November 2, 1972)

BY THE COMMISSION:

1. The Commission has before it an Application for Review filed on August 11, 1972 by Mr. and Mrs. John Eighmey of the ruling of the Broadcast Bureau of August 3, 1972, — F.C.C. 2d — (1972).

2. We have examined all of the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 72-997

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (ADRIAN, MICH., AND WEST LAFAYETTE, IND.)	Docket No. 19512 RM-1820 RM-1822

FIRST REPORT AND ORDER

(Adopted November 8, 1972; Released November 13, 1972)

BY THE COMMISSION:

1. The Commission has before it the Notice of Proposed Rule Making, released May 23, 1972, (FCC 72-430), proposing an amendment of Section 73.202(b) of the Rules, the Table of FM Assignments, by assigning FM channels to three communities. By Order, FCC 72-604, the petition filed by Gardner Broadcasting Co., Inc., for assignment of Channel 249A to Winchendon, Massachusetts (RM-1791) was severed from this proceeding and consolidated into Docket No. 19540. This Report and Order concerns only the petition filed for assignment of an FM channel to Adrian, Michigan. At a later date, a Report and Order will be issued with respect to West Lafayette, Indiana.

2. The rule making was instituted on a petition filed by Gerity Broadcasting Company (Gerity) (RM-1820) for assignment of Channel 237A to Adrian, Michigan. Adrian with a population of 20,382 is the seat of Lenawee County (pop. 81,609). It has a Class IV AM station, licensed to the petitioner, and an FM station (WLEN), licensed to Lenawee Broadcasting Company (Lenawee). The Notice pointed out that the channel could be assigned there without affecting other assignments. It would be the second Class A channel for Adrian. However, due to the requirements of the minimum mileage separation rules, the transmitter site would have to be located in an area approximately seven miles southwest of Adrian. Although Lenawee had contended that there was no location from which Adrian can be served in its entirety with the minimum field strength of 70 dbu, a tentative finding was made that there were parcels of property available from which a station could serve the community in compliance with the technical regulations. It also pointed out that a Class A FM station operating with maximum facility would provide a first service to an area of 57.4 square miles and a second service to an area of 169 square miles within the 1 mv/m contour.

3. As to Lenawee's objection that the assignment of a second FM channel to Adrian would do severe economic harm to its station, the Notice stated that it has been the long-established Commission policy to make ultimate decisions with respect to *Carroll* issues at the time of

an application for a specific station rather than in rule making proceedings. However, it agreed with Lenawee that Gerity had made no appropriate showing as to the need of the community for an additional service and should have an opportunity to cure the deficiency in comments responding to the Notice of Proposed Rule Making.

4. In its comments, Gerity sets forth the demographic, economic, political and sociological characteristics of Adrian and Lenawee County. Gerity contends that 1,949 or 9.5% of Adrian's population and 3,515 or 4.3% of Lenawee County population are Spanish surnamed Americans, and that, although the population of Adrian did not increase in the decade from 1960 to 1970, six other townships, which lie wholly or partially within the service area of Class A FM station, grew 5% or more during the decade. It asserts that Adrian is served by three railroads and ten motor carriers; that, of more than 90 manufacturing and procesing firms in the county, 53 are based in Adrian; that agriculture is also a major economic activity in the county; and that the retail sales for 1972 are estimated as 75 million dollars for Adrian and 178 million dollars for the county. Gerity states that Adrian is governed by six commissioners and a mayor with the affairs of the city managed by an administrator, and the county is governed by the Board of Commissioners consisting of 15 elected members, and that there are a number of public and private schools as well as special schools and two colleges, and a number of cultural resources for arts, dramatics and music. As to possible transmitter site, Gerity contends that it has obtained an agreement to use a parcel of land 0.35 mile closer to Adrian than previously illustrated in its petition, and insists that the 70 dbu contour would include the city's entire populated area. Lenawee in its reply alleges that there is no showing of unmet needs and interests; that Station WLEN already provides the early morning service of farm programming and school closing and road condition bulletins; and that Lenawee County is already dominated by big city stations and has two local outlets.

5. Lenawee in its comments asserts that the examination of the Gerity proposal reveals, in addition to a coverage problem, a potential problem of shadowing, i.e., on a radial chosen by Gerity, approximately one-third of the city would be beneath the line-of-sight. In reply, Gerity states that no significant shadowing would occur in connection with the operation of an FM station from the site identified by Gerity in its comments as meeting all of the Commission's technical requirements and that any shadowing which might occur could be alleviated by raising the radiation center of the station's antenna.

6. Additionally, Lenawee asserts that it does not concur in the dismissal of the economic issue as being one more appropriate for consideration at time of an application rather than in rule making, and that such a position is contrary to precedent and the public interest, citing *FM Channel Assignments, Gainesville, Florida*, 11 RR 2d 1699 (1968); *FM Channel Assignments, Phoenix, Arizona*, 8 FCC 2d 391 (1967). It contends that, if FM service in Adrian, Michigan, is to remain anything other than a satellite of the AM monopoly, then the Commission must give consideration and credence to the economics involved; that an additional FM channel in the county cannot be realistically justified on the basis of a separately-owned and independently operated service;

and that any reduction of advertising income caused by the addition of another FM channel in Adrian would force WLEN to effect severe and extensive cut-backs, affecting the station's present level of service to the community.

7. In reply to the Lenawee arguments on the economic issue, Gerity avers, citing *Sanders Brothers Radio Station* v. *FCC*, 309 U.S. 470 (1940), and *Carroll Broadcasting Co.* v. *FCC*, 258 F. 2d 440 (D.C. Cir. 1958), that if there is evidence indicating that a community may not be able to support another station, the ultimate question to be answered is whether the public will lose service as a result of the construction of a new station. This question, it urges, can only be decided when there are applicants for a station; and although Lenawee believes that Gerity is the only potential applicant for Channel 237A at Adrian, this is not certain, and only when an application with specific programming proposals is filed can the Commission make a determination as to whether the public interest would suffer a net loss because of a cutback of service by WLEN.

8. We agree with these contentions of Gerity. The cases cited by Lenawee do not stand for the proposition that economic issues are to be resolved in rule making proceedings. In those cases the decisions concerning FM channel assignment were based on a consideration of public interest factors. Only in passing, and in the very broadest terms, did they advert to the economic question. Here, Gerity has shown that a Class A FM station, operating from an assumed site southwest of Adrian, would provide first and second FM services to the areas located within the projected 1 mv/m contour now deprived of or limited to one FM service. Further, the preclusion study indicates that only Channel 237A would be affected by its assignment to Adrian, and the area where the channel can be utilized is limited to a small area near Adrian. It also appears that, although the siting of the station here would be critical, an FM station could be established conforming to all technical requirements of the rules. Thus, we are of the opinion that the assignment of Channel 237A to Adrian, Michigan, would result in the efficient use of FM frequencies and would be in the public interest. In view of the foregoing, we will make this assignment.

9. Authority for the action taken herein is contained in Sections 4 (i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

10. Accordingly, IT IS ORDERED, That effective December 22, 1972, the Table of FM Assignments (Section 73.202(b) of the Rules) IS AMENDED as follows:

City: Adrian, Mich.
Channel No.: 237A, 280A.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-975

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REQUEST, FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN CABLE TELEVISION SYSTEMS PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY GENERAL ELECTRIC CABLEVISION CORP. Re Cable Television System Franchises for the City of Schenectady, the Village of Scotia, and the Towns of Rotterdam, Niskayuna, Glenville, and Colonie, N.Y.	File No. CTAX-8

MEMORANDUM OPINION AND ORDER

(Adopted November 1, 1972; Released November 7, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND HOOKS ABSENT.

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control, or interest of a cable system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order, we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the 1954 Internal Revenue Code are applicable.[2] On January 26, 1972, in *Cosmos Broadcasting Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 tax certificate, filed on August 22, 1972, by General Electric Cablevision Corporation ("GE Cablevision") with respect to its sales to Athena Communica-

[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: . . . (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in part or in whole the service area of such system (i.e., the area within which the system is serving subscribers. . . . (b) The provisions of paragraph (a) of this section are not effective until August 10, 1973, as to ownership interests proscribed herein if such interests were in existence on or before July 1, 1970 (e.g., if a franchise were in existence on or before July 1, 1970): *Provided, however,* That the provisions of paragraph (a) of this section are effective on August 10, 1970, as to such interests acquired after July 1, 1970."

[2] Section 1071 of the 1954 Internal Revenue Code provides that, "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elected, be treated as an involuntary conversion of such property within the meaning of Section 1033."

tions Corporation ("Athena") on December 17, 1971, and February 4, 1972, of GE Cablevision's franchises for operation of cable television systems in the city of Schenectady, the Village of Scotia and the towns of Rotterdam, Niskayuna, Glenville, and Colonie, New York. In support of its request, GE Cablevision states that: (a) it is a wholly owned subsidiary of the General Electric Company ("General Electric"), (b) General Electric is the parent corporation of General Electric Broadcasting Co., Inc. ("GE Broadcasting"), the licensee of Television Station WRGB, Schenectady, New York, which places a Grade B signal over each of the aforementioned communities;[3] (c) GE Cablevision obtained its franchises for cable television systems in the aforementioned communities prior to July 1, 1970;[4] (d) the franchise assignments were approved by the various communities; and (e) GE Cablevision entered into the agreement to divest itself of the franchises within 11 months after publication of the *Second Report and Order in Docket No. 18397*, and sold the franchises for the sole purpose of compliance with the new rule (now Section 76.501) adopted therein. GE Cablevision also submits with its request, a letter to the Commission dated July 24, 1972, from James T. Tagan, president of Athena, which states that: (e) Athena is a wholly owned subsidiary of Gulf Western Industries, Inc., and Schenectady Cablevision, Inc., is a wholly owned subsidiary of Athena; (f) on May 24, 1971 GE Cablevision entered into an agreement to sell and assign to Athena the cable franchises for the aforementioned communities; (g) these franchises were in fact assigned to Schenectady Cablevision on December 17, 1971, and February 4, 1972; and (h) neither Gulf Western, Athena, nor Schenectady Cablevision holds any broadcast interest which conflicts with the Commission's television station-cable cross-ownership ban.[5]

As stated in *Plains Television Corporation*, FCC 72-687, Released August 1, 1972, "Paragraph (b) of Section 76.501 sets forth, as an example of a cable television system 'interest' within the contemplation of that section, the possession of a municipal 'franchise' to operate a cable television. Thus the issuance of a tax certificate would be appropriate where the licensee of a television broadcast station transferred to another its rights, under a municipal franchise, to construct and operate a cable system not yet in existence whose service area (once the system began operations) would be within the predicted Grade B contour of the station"[6] (underlining deleted). The facts in the case now before us are on all fours with the hypothetical case described in Plains.

The impact of Section 76.501 is that if a party has interests in both a television broadcast station and co-located cable television system franchise, there must be a divestiture of the interest in either the sta-

[3] Inclusion of the aforementioned communities within the predicted Grade B contour of Television Station WRGB, Schenectady, New York, is confirmed by Commission examination of its own records.

[4] Specifically, GE Cablevision states, the franchises were obtained on the following dates: Colonie, December 14, 1964; Schenectady, February 1, 1965; Niskayuna, March 16, 1965; Scotia, August 24, 1966; and Glenville, April 5, 1965. Commission records indicate that General Electric has controlled WRGB for more than 25 years.

[5] A check of Commission files disclosed no contrary information re item (h).

[6] Re this, footnote 3 of *Plains* adds: "Assuming, of course, that the station licensee possessed both the station and the franchise on or before July 1, 1970, and disposed of its franchise rights or after August 10, 1970, pursuant to the requirements of Section 76.501."

tion or the cable system franchise. Thus, such a divestiture, in compliance with the requirements of Section 76.501 is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television broadcast stations and cable television systems.

On the basis of the foregoing, including GE Cablevision's and Athena's assertions of fact as set forth in paragraph 2 supra, we find that the sale by GE Cablevision of its franchises to operate cable television systems serving the city of Schenectady, the village of Scotia, and the towns of Rotterdam, Niskayuna, Glenville, and Colonie, New York, was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to the General Electric Cablevision Corporation the tax certificate appended hereto, certifying that its sale and assignment of the above-referenced cable television system franchises was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

General Electric Cablevision Corporation (a wholly owned subsidiary of the General Electric Company, parent corporation of General Electric Broadcasting Co., Inc., licensee of Television Station WRGB, Schenectady, New York) has reported to the Commission its sale on December 17, 1971, and February 4, 1972, of its franchises for operation of cable television systems in the city of Schenectady, the village of Scotia, and the towns of Rotterdam, Niskayuna, Glenville, and Colonie, New York, to Schenectady Cablevision, Inc., a wholly owned subsidiary of Athena Communications Corporation, to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross ownership, operation, control or interest of a cable television system with a local television broadcast station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 1st day of November, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
INSPECTION BY THE PUBLIC OF REPORTS SUBMITTED BY COMMON CARRIERS PURSUANT TO 47 CFR § 43.61

RULING

(Released October 24, 1972)

1. Pursuant to Section 43.61 of the Commission's Rules, 47 CFR § 43.61 certain common carriers are required to submit two reports containing detailed information concerning overseas traffic handled with overseas points, one for the first six months of the calendar year, and the second for the entire calendar year.[1] These particular reports are not listed in 47 CFR § 0.455 as routinely available for inspection although other reports filed pursuant to Section 43.71 of the rules are so listed.

2. For several years, the Commission has been publishing consolidated data from individual reports submitted by the carriers in the FCC Statistical Yearbook (Statistics of Communications Common Carriers). For example, Tables 23 and 24 of the Yearbook contain an analysis of overseas message telegraph and telex by country or point on a consolidated industry basis.[2]

3. Recently, the Commission, with the agreement of the carriers, established procedures for the computerization of these reports. Since it has been our understanding that several of the carriers principally engaged in handling telegraph traffic have been informally exchanging their individual reports among themselves for several years, it was proposed that the new computerized reports showing results for each carrier be made available to all carriers as well as to the general public. (In this connection, several carriers proposed that we indicate each carrier's percentage of participation in overseas message telegraph and telex by country or points.) Accordingly, all carriers required to submit reports under Section 43.61 of the rules were asked to advise the Commission, in writing, as to their views with respect to making their individual data available to each other and to the general public.

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[1] Reports are filed by, among others, American Telephone and Telegraph Company (AT&T), various subsidiaries of International Telegraph Company, ITT World Communications Inc. (ITT Worldcom), All America Cables and Radio, Inc. (AAC&R), ITT Communications, Inc.-Virgin Islands (ITTCIVI), RCA Global Communications Inc. (RCA Globcom), Western Union International, Inc. (WUI), Cable & Wireless/Western International, Inc. (C&W/WUI), Tropical Radio Telegraph Company, Inc. (Tropical Radio), U.S.-Liberia Radio Company (USLR), The French Cable Company (FC), The Hawaiian Telephone Company (HAWTEL), and The Western Union Telegraph Company (WUTC).

[2] Although these statistics do not show the individual data reported by each carrier, Table 15 contains an analysis of overseas telephone traffic by country or point which reports information obtained solely from AT&T's reports filed pursuant to 47 CFR 43.61.

4. All of the carriers responded and a number stated they would have no objection to making their statistical data filed in compliance with Section 43.61 available for public inspection. However, ITT Worldcom, RCA Globcom, and WUI indicated that their individual reports should not be made available for public inspection but that they would be willing to permit inspection by some of the other record carriers on a reciprocal basis.[3] By letter of December 10, 1971, the Common Carrier Bureau asked the carriers opposing total disclosure to submit their reasons for limiting disclosure to select carriers.

5. The carriers gave several different reasons to support their requests for selective disclosure. One contended that the detailed nature of the data would permit the identification of "information relating to individual customers or groups of customers" (ITT Worldcom letter of December 23, 1971). Another carrier pointed out that disclosure would cause information to be made available not only to competitors but also to persons who had "contributed little or no effort" to compile it (RCA Globcom letter of February 29, 1972).[4] The carriers also submitted that there are often "important purposes in the areas of planning and evaluation" to be served by the exchange of individual reports among the record carriers and that no similar purpose would be served by "total disclosure" (WUI letter of February 18, 1972, concurred in by C&W/WUI). These carriers further contended that the information involved is commercial or financial data "entitled to exemption from public disclosure" under Section 552(b)(4) of the Public Information Act, 5 U.S.C. § 552(b)(4), and Section 0.457(d) of the Commission's Rules, 47 CFR § 0.457(d), and that they are entitled to have it maintained on a confidential basis by the Commission even though they may be willing to make it available to some of their competitors on a reciprocal basis (WUI letter, *supra*). In addition, the carriers argued that unlimited disclosure could work to their detriment in meeting the competition of foreign communications carriers (Letters of ITT Worldcom, WUI, *supra*).

6. We have considered the reasons submitted by the carriers in support of limited disclosure and believe that their requests for limited confidentiality should not be granted. Initially, it is difficult to understand how the public availability of this information would cause them serious competitive injury in view of their apparent willingness to furnish it to their principal competitors. As for the contention that this is the kind of material that is exempted from public disclosure under the Public Information Act and the Commission's rules, it should be noted that the information normally entitled to protection under these provisions is the kind which ordinarily would not be made available to competitors by the person submitting it. It seems obvious that the Commission should be under no obligation to maintain this information on a confidential basis when the persons submitting it intend to give it to their principal competitors. That the usual justification for protecting this data is lacking here is reinforced by the willingness of

[3] ITT Worldcom's reply was also made in behalf of AAC&R and ITTCIVI and WUI's response was made in behalf of C&W/WUI.

[4] RCA Globcom also suggested that a "consolidated industry report" should be prepared for public consumption, that its individual data should be returned, and that the carriers, rather than the Commission, should arrange for the exchange of their individual statistics among themselves. (RCA letter, *supra*.)

the other carriers to make it available to everyone. The fact that the carriers would receive, in some instances no comparable information in return is, of course, no basis for non-disclosure. Nor does the fact that there may be "important purposes" to be served by exchanging the information among principal competitors provide such a basis.

7. Finally, it should be noted in this connection that Section 412 of the Communications Act, 47 U.S.C. 412, among other things, expressly provides that reports the Commission requires the carriers to file pursuant to the Communications Act, are to be the public records unless, in accordance with the same section's proviso clause, the Commission determines it would be in the public interest to keep them confidential because their publication would place the United States domestic carriers at a disadvantage with their foreign competitors.[5] Section 0.457(3) of the rules provides that any person may file a petition requesting that materials covered by Section 412 be withheld from public inspection and that such a petition must demonstrate that the material "* * * relates to foreign wire or radio communications; that its publication would place American communication companies at a disadvantage in meeting the competition of foreign communication companies; and that the public interest would be served by keeping its terms confidential."

8. While the carriers have made the bare claim that total disclosure would place them at a disadvantage with respect to their foreign competition, but that a disclosure limited to U.S. international record carriers would not, they have given no reasons to support these assertions. Nor have they provided any reasons as to how the public interest would be served by disclosure limited only to their principal competitors. It seems clear that an unsubstantiated allegation of potential economic injury should not be sufficient to invoke the protection afforded by Section 412 in view of the explicit disclosure requirements set forth in that section.

9. Accordingly, pursuant to 47 CFR § 0.459, the Bureau has determined that the individual reports submitted pursuant to 47 CFR § 43.61 should be available for public inspection.

10. Pursuant to 47 CFR § 0.459(g), the individual reports will be held in confidential status for a period of 30 days from the date of release of this order, to afford ITT Worldcom, RCA Globcom, and WUI an opportunity within that period to file an application for review by the Commission and to petition for judicial review of this action.

FEDERAL COMMUNICATIONS COMMISSION,
BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

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[5] This section entitled "Documents Filed To Be Public Records-Use in Proceedings," provides in pertinent part as follows:

"* * * and the statistics, tables, and figures contained in the annual or other reports of carriers * * * made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, * * * *Provided*, That the Commission may, if the public interest will be served thereby, keep confidential any contract, agreement, or arrangement relating to foreign wire or radio communication when the publication of such contract, agreement, or arrangement would place American communication companies at a disadvantage in meeting the competition of foreign communication companies."

109-016—72——4

F.C.C. 72R-288

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
APPLICATION OF FLOYD E. DUGAS DOING BUSINESS AS JENNINGS MOBILFONE, FOR A LICENSE FOR A NEW PUBLIC COAST CLASS III-B RADIOTELEPHONE STATION TO BE LOCATED IN THE VICINITY OF JENNINGS, LA.	Docket No. 19531 File No. 828-M-L-51

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1972; Released October 5, 1972)

BY THE REVIEW BOARD:

1. The application of Floyd E. Dugas, d/b/a Jennings Mobilfone (Mobilfone) for a new public Class III-B coast station to be located near Jennings, Louisiana, was designated for hearing by Commission Order, FCC 72-555, 37 FR 14011, published July 15, 1972. Presently before the Review Board is a motion to enlarge issues, filed July 31, 1972, by the South Central Bell Telephone Company (South Central),[1] requesting the addition of the following issue (f):

(f) To determine the nature and extent of co-channel interference, if any, that would arise from the granting of Mobilfone's application and the simultaneous operation of South Central's station, Call Sign KKM-648, at Baton Rouge, Louisiana, and of Mobilfone's proposed station, and whether such interference would be tolerable or mutually destructive.

Also, South Central requests that existing issue (e) be modified to read as follows:

To determine, in light of the evidence produced on all the foregoing issues and issue (f) below, whether the public interest, convenience and necessity will be served by the grant of the subject application.[2]

2. In support of its request for an interference issue, South Central first notes the Commission's instructions in the designation order that coverage calculations should be based on the method set forth in the Report and Order in Docket No. 18944, adopted May 24, 1972.[3] Utilizing this method and data set forth in Mobilfone's application, South Central asserts that overlap of service areas will exist.[4] South Central states that calculations which it had made at a previous date[5] did not depict interference because those calculations utilized a method,

[1] South Central was made a party respondent to the proceeding in the designation order.
[2] Also before the Board is the Safety and Special Radio Services Bureau (Bureau) comments, filed August 7, 1972.
[3] Docket No. 18944 was a rule making proceeding which established technical standards for public coast stations.
[4] South Central's station KKM-648 operates, and Mobilfone proposes to operate, on 161.950 MHz, Channel 27.
[5] South Central filed a petition to deny the Mobilfone application prior to the Order of designation, but no interference question was raised therein.

set forth in the notice of proposed rule making in Docket No. 18944, which differed from the method later adopted. The Safety and Special Radio Services Bureau supports the South Central motion, stating that the "questions raised and the relief requested are substantial. . . ." Jennings Mobilfone did not file a responsive pleading to the South Central motion.

3. After a thorough review of the pleadings in the light of the applicable rules as recently amended in Docket No. 18944 (FCC 72-448, 35 FCC 2d 114), the Board is constrained to conclude that the pleadings before it contain insufficient information to warrant addition of the requested issues. In this connection, South Central's allegations of fact should have been supported by a showing specifically depicting the nature and extent of the alleged interference, as well as the methods utilized in making the showing.[6] Section 1.229 of the Rules. Statements in South Central's petition (see para. 2 *supra*) indicate that this information is available. The necessity for such a showing, as has been demonstrated in other services, is that it provides the parties and reviewing authorities with information relevant to the fully informed and considered determination required by the Rules and the Communications Act, and thus expedites the effective functioning of the adjudicative process. In light of the petitioner's failure to adequately support its general allegations of interference, as required by the Commission's Rules, the motion must be denied.

4. Accordingly, IT IS ORDERED, That the motion of South Central Bell Telephone Company to enlarge issues, filed July 31, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[6] The seriousness of the lack of information in the pleadings is additionally emphasized by the fact that, among other things, they do not include information as to effective radiated power and antenna height data in pertinent directions.

F.C.C. 72-947

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of JOHNSON LABORATORIES, INC., COCKEYSVILLE, MD. For Experimental Authorization for Emergency Vehicle Alarm Device	File No. 5913-13-ER-PL-72

OCTOBER 26, 1972.

JOHNSON LABORATORIES, INC.,
3 Industry Lane,
Cockeysville, Md.

GENTLEMEN: This will refer to your application (File No. 5913-ER-PL-72, filed March 1, 1972) for experimental authorization to test an "emergency vehicle alarm" device, and to subsequent correspondence and conversations with our staff.

The device described in your application (U.S. Patent #2,994,765) is intended for installation in police cars, fire trucks, ambulances, and other emergency vehicles to warn motorists (with AM receivers on) of their approach. The device has an effective radiated power of 10 watts, and is designed to sweep the entire standard broadcast band (540-1600 kHz) with a 1000-cycle modulating frequency. According to information contained in the patent, both the audio sweep (about 20 per minute) and the radio frequency sweep (750-2000 per minute) are accomplished by mechanical rotation of transmitter components.

No information is provided concerning the method of signal directionalization, the strength of the signal generated by the device, or what skywave effects might be produced under nighttime operating conditions. Irrespective of these considerations, you concede that the device can be effective only to the extent that it *causes interference* to licensed AM broadcast services, thereby capturing the attention of nearby motorists. We view this as the fatal flaw in the proposal.

Section 316 of the Communications Act, as interpreted by the courts, requires that the protected service areas of standard broadcast stations be respected in our consideration of potentially interfering uses. *FCC v. National Broadcasting Company (KOA)*, 319 U.S. 239 (1943); *WBEN, Inc. v. FCC*, 290 F. 743 (1961). Operating in the Baltimore metropolitan area, as you propose, would cause interference, in varying degrees, to reception of at least some of the 15 standard broadcast stations in the area. This interference would not be confined to motorists, but would affect en route households as well. While this could be tolerated for a short period of experimental testing, the long-term, widespread use of devices of the type proposed in the standard broadcast band would not be consistent with our statutory obligations, as defined in the cases cited. Moreover, it could create a false sense of

security, in that only motorists with *AM* receivers turned *on* would be alerted.

Ideally, the concept of radio warning to the motoring public would be accomplished by emergency vehicle transmissions on a frequency or band of frequencies specifically dedicated to vehicle warning systems. It appears to us that such systems could be effective only as part of a national program requiring the factory installation of receivers in passenger vehicles, pre-tuned to appropriate non-broadcast frequencies. In this connection, the Federal Highway Administration (DOT) has plans and programs to investigate the use of spectrum space immediately above and below the standard broadcast band for the carriage of emergency messages, traffic advisories, and off-road services to motorists on selected highways. Should you wish to participate in these programs, it is suggested that you contact Mr. Lyle Saxton, Chief, Systems Development and Technology Group, Traffic Systems Division, Federal Highway Administration (DOT), Washington, D.C. 20590, for further information.

While we share your concern over the rising incidence of collisions between emergency and passenger vehicles, and stand ready to consider on its merits any petition for the allocation of suitable spectrum space for warning systems designed to eliminate this hazard, we do not feel that our statutory obligations can be met, or that the public interest will be served, by encouraging this line of development in the standard broadcast band.

Your application was filed under Part 5 of our rules—Experimental Radio Services—section 5.101(b) of which requires that experimental operations designed to exceed normal service tolerances be conducted ". . . without causing harmful interference to any other radio service . . ." Since the proposed bandwidth occupancy would span the entire AM broadcast band and, as already noted, would cause varying degrees of interference to licensed broadcast services, the application could be granted only upon waiver of this section. You have not requested waiver of section 5.101(b), but even if you had, it would have been necessary to show affirmative reasons justifying the grant of a waiver in the public interest. *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F. 2d 664 (1968). Because of the interference and other problems associated with your proposal, it is apparent that this type of threshold showing cannot be made in this case. Under these circumstances, you are not entitled to an evidentiary hearing as a matter of law. *United States et al. v. Storer Broadcasting Company*, 351 U.S. 192 (1956); *Gerico Investment Company*, 17 RR 303 (1958); *Hertz Corporation*, 18 RR 88a (1959). The application IS ACCORDINGLY DISMISSED.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-974

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of REQUEST FOR ISSUANCE OF TAX CERTIFICATE FOR SALE OF INTEREST IN A CABLE TELEVISION SYSTEM PURSUANT TO SECTION 76.501(a)(2) OF THE COMMISSION'S RULES, BY KIRO, INC. Re a Cable Television System Operation Serving the Seattle, Wash. Area	File No. CTAX-7

MEMORANDUM OPINION AND ORDER

(Adopted November 1, 1972; Released November 7, 1972)

BY THE COMMISSION: COMMISSIONERS H. REX LEE AND HOOKS ABSENT.

1. In our *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816, we adopted Section 76.501 (originally designated Section 74.1131) of the Commission's Rules which, inter alia, prohibits cross ownership, operation, control, or interest of a cable television system with a local television broadcast station, and requires divestiture where necessary to eliminate such existing proscribed cross-relationships.[1] In paragraph 16 of that report and order we noted that such divestitures can be effected without payment of capital gains tax if the "involuntary conversion" provisions of the Internal Revenue Code are applicable.[2] On January 26, in *Cosmos Cablevision Corporation*, 33 FCC 2d 293, we granted the first two tax certificate applications pursuant to our new cable television cross-ownership rules.

2. Now before us is an application for a Section 1071 certificate, filed by KIRO, Inc., licensee of Station KIRO-TV, Seattle, Washington, with respect to KIRO, Inc.'s transfer of its stockholdings in United Community Antenna System, Inc. ("UCAS"), to Viacom International, Inc. ("Viacom").

3. In support of its application, KIRO, Inc., states the following: (a) KIRO, Inc., became the licensee of KIRO-TV in December 1963, acquired a 24% interest in UCAS in December 1966. (b) Other UCAS shareholders, immediately prior to the transaction in question, were:

[1] Section 76.501 provides, in pertinent part: "(a) No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in: * * * (2) a television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e. the area within which the system is serving subscribers * * *."

[2] Section 1071 of the 1954 Internal Revenue Code provides that, "If the sale or exchange of property (including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate to effectuate a change in policy or the adoption of a new policy by the [Federal Communications] Commission with respect to the ownership or control of radio broadcast stations, such sale or exchange shall, if the stockholder so elected, be treated as an involuntary conversion of such property within the meaning of section 1033."

(1) Fisher's Blend Stations, Inc. (24%), licensee of Station KOMO–TV, Seattle; (2) King Video Cable Co. (24%), subsidiary of KING Broadcasting Co., licensee of Station KING–TV, Seattle; and (3) Viacom (28%), a multiple system operator with cable television holdings in California, Washington, and Oregon. (c) On March 29, 1972, KIRO, Inc., Fisher's Blend, and King Video agreed to sell their respective interests to Viacom, and the sale was consummated on that date. (d) KIRO, Inc.'s purpose, in selling its UCAS interest to Viacom, was in compliance with the requirements of Section 76.501 of the Commission's Rules. (e) KIRO, Inc.'s legal counsel has been informed by Terrence A. Elkes, vice president and general counsel of Viacom, that Viacom does not hold any interest in any television station whose predicted Grade B contour includes within it any part of the community of service, or service area, of the UCAS cable system operation in the Seattle area.

4. The impact of Section 76.501 is that, if a cable television system which has a cross-interest relationship with a local television broadcast station proposes to carry the signal of *any* television broadcast station (i.e., perform a key function by which the term "cable television system" is defined), there must be a divestiture of the interest in either the cable television system or the television broadcast station. Thus, a divestiture of the interest in either the system or the station, in compliance with the requirements of new Section 76.501, is clearly "necessary or appropriate" to effectuate a new policy by the Commission with respect to ownership and control of television stations and cable television systems.

5. In view of the foregoing, including KIRO, Inc.'s assertions of fact as set forth in paragraph 3 supra, we find that the sale by KIRO, Inc., of its above described interest in UCAS's Seattle, Washington, area cable television system operation was necessary or appropriate to effectuation of the new policy adopted by the Commission and reflected in Section 76.501 of our Rules, with respect to the ownership and control of television stations and cable television systems.

Accordingly, IT IS ORDERED, That there BE ISSUED to KIRO, Inc., the tax certificate appended hereto, certifying that its sale of its interest in the above-referenced cable television system operation was necessary or appropriate to effectuation of the new policy adopted by the Commission with respect to the ownership and control of television stations and cable television stations and cable television systems.

FEDERAL COMMUNICATIONS COMMISSION,
BEN WAPLE, *Secretary.*

CERTIFICATE ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO SECTION 1071 OF THE 1954 INTERNAL REVENUE CODE (26 U.S.C. 1071)

KIRO, Inc., the licensee of Station KIRO–TV, Seattle, Washington, has reported to the Commission the sale on March 29, 1972, of its interest in United Community Antenna Service, Inc., operator of a cable television system operation in the Seattle, Washington, area, to effectuate compliance with Section 76.501 of the Commission's Rules with respect to ownership and control of cable television systems and television broadcast stations.

It is hereby certified that the transfer was necessary or appropriate to effectuate the Commission's new rule and policy prohibiting cross-ownership, operation, control, or interest of a cable television system with a local television broadcast

station, and, in particular, to effectuate compliance with the provisions of Section 76.501 (originally designated Section 74.1131) of the Commission's Rules, adopted June 24, 1970, and released July 1, 1970, in the *Second Report and Order in Docket No. 18397*, 23 FCC 2d 816.

This certificate is issued pursuant to the provisions of Section 1071 of the 1954 Internal Revenue Code.

In witness whereof, I have hereunto set my hand and seal this 1st day of November, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-954

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re LVO CABLE OF SHREVEPORT-BOSSIER CITY, BOSSIER CITY, LA. For Certificate of Compliance	CAC-284

MEMORANDUM OPINION AND ORDER

(Adopted October 26, 1972; Released November 1, 1972)

BY THE COMMISSION: COMMISSIONER H. REX LEE CONCURRING IN THE RESULT; COMMISSIONERS REID AND HOOKS DISSENTING; COMMISSIONER WILEY ABSTAINING FROM VOTING.

1. On April 28, 1972, LVO Cable of Shreveport-Bossier City filed an application (CAC-284) for certificate of compliance for a new cable television system at Bossier City, Louisiana. The proposed system will operate with 27 channel capacity (and, in addition, to the basic system will offer 14 more channels with 12 channel return capacity) to offer approximately 43,000 persons the following television signals: KTAL-TV (NBC); KSLA-TV (CBS); KTBS-TV (ABC), Shreveport, Louisiana; KHTV (Ind.), Houston, Texas; KTVT (Ind.), Ft. Worth, Texas; and WYES-TV (Educ.), New Orleans, Louisiana.[1] Public notice of this application was given May 12, 1972. On June 12, 1972, KTBS, Inc., licensee of Station KTBS-TV, Shreveport, Louisiana, filed an "Opposition to Application for Certificate of Compliance," and KSLA-TV, Inc., licensee of Station KSLA-TV, Shreveport, Louisiana, filed a "Petition for Special Relief," both directed against a grant of CAC-284. On September 1, 1972, LVO filed both a "Reply to Opposition of KTBS-TV" and a "Reply to Opposition" [of KSLA-TV, Inc.]. On September 20, 1972, KTBS, Inc., filed "Comments on Amendment of LVO Cable of Shreveport-Bossier City."

2. In its "Petition for Special Relief," KSLA-TV, Inc., alleges: (a) that LVO appears to have over-committed its channel capacity; and (b) that LVO's franchise does not appear to comply with the Commission's franchise standards since (1) there is no franchise recitation that it results from a full public proceeding, (2) there is no construction timetable and the provisions relating to construction do not require significant construction within one year, (3) the franchise is of unlimited duration, and (4) no provision is made for investigation and resolution of complaints. In its "Opposition to Application for Certificate of Compliance," KTBS, Inc., makes the following allegations

[1] A construction permit is outstanding for KTXK (Ind.), Texarkana, Texas, which will also be carried when constructed.

in addition to matters raised above; (c) that there are no channels available for local programs designed to inform the public on controversial issues of public importance; (d) that the franchise does not require a public proceeding in every instance before rates can be changed; (e) that the three percent franchise fee is based on gross operating revenues and is not limited to subscribers revenues; and (f) that LVO paid an acceptance fee of $35,000 which—when considered with the three percent annual fee—results in an annual fee in excess of three percent.

3. We rule on the objections as follows: (a) LVO explains that in addition to its basic 27 channel system it plans to build a "Metro 14–12" system providing 14 more channels with capability of video and audio on 12 return channels so that there will be adequate channel capacity to meet its various commitments; (b) (1) LVO avers that in fact it received its franchise as a result of a full public proceeding, and this has not been denied; (2) LVO is required to begin construction within 45 days of Commission approval of its proposal, and to complete construction within 24 months of beginning construction. While this timetable does not formally correspond to the literal requirement of Section 76.31(a)(2) of the Commission's Rules (which requires a "significant" amount of construction within one year of certification), it assures completion of construction in less time than required by the Commission's rules. In these circumstances, we can see no reason to object to the technical variation in terms when the net effect is completely consistent with our policies; (3) LVO states that it is willing to have grant of a certificate of compliance made contingent upon its voluntarily seeking franchise renewal, in the context of a public hearing, at the end of 15 years. We find this offer to be acceptable, and therefore proceed on the understanding that LVO will voluntarily seek franchise renewal by February 1, 1987; (4) Section 25(d) of the franchise provides both a procedure for processing complaints and applicable sanctions in the event of breach,[2] (c) LVO points to two channels listed in its application (a news service channel and a community affairs program channel) which are available for local programs on controversial issues; (d) the franchise mechanism for rate changes is that the cable operator may file a proposal which the city may disapprove after a public hearing if it wishes. This appears adequate protection for the public under the circumstances; and (e)(f) the discrepancy in the franchise fee, whether in its gross revenues aspect or because of the additional lump sum payment, is not so great as to bar the franchise (granted February 1, 1972) from being approved as in "substantial compliance" within the meaning of Par. 115. Reconsideration of Cable Television Report and Order, FCC 72–530, 36 FCC 2d 326, 366. In addition, our independent review of the franchise persuades us that it is in substantial compliance with our rules and policies sufficient to warrant a grant until March 31, 1977.

In view of the foregoing, the Commission finds that a grant of the subject application would be consistent with the public interest.

[2] LVO also represents that it will maintain an office and a telephone listing in Bossier City so that maintenance service will be promptly available.

Accordingly, IT IS ORDERED, That the "Opposition to Application for Certificate of Compliance" filed June 12, 1972, by KTBS, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" filed June 12, 1972, by KSLA–TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That LVO Cable of Shreveport-Bossier City's application (CAC–284) IS GRANTED and an appropriate certificate of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

37 F.C.C. 2d

F.C.C. 72-953

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re: PLYMOUTH CATV SERVICES, INC., CITY OF PLYMOUTH, IND. For Certificate of Compliance	CAC-442 CSR-232

MEMORANDUM OPINION AND ORDER

(Adopted October 26, 1972; Released November 1, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REID CONCURRING IN THE RESULT.

1. On June 12, 1972, public notice was given that Plymouth CATV Services, Inc.,[1] had filed an application (CAC-442) for Certificate of Compliance for a new cable television system at City of Plymouth, Indiana. On July 7, 1972, public notice was given that Valley Cablevision, Inc.,[1] had filed an application (CAC-658) for a new cable television system at Community of Plymouth (Marshall County), Indiana. On August 7, 1972, Advance Brands, Inc., which also holds a non-exclusive franchise for City of Plymouth, filed an opposition to CAC-658. On August 31, 1972, Advance filed both a "Petition for Special Relief" (CSR-232) directed against CAC-442 and a "Motion to Consolidate Proceedings" involving CAC-442 and CAC-658. In its "Petition for Special Relief," Advance concedes that ". . . the instant petition is filed in the form of a Petition for Special Relief *because the time for the submission of oppositions has expired.* (emphasis added)." Thereafter, CAC-442 was granted September 26, 1972, by the Chief, Cable Television Bureau, acting pursuant to authority delegated in Section 0.289(c)(12) of the Commission's Rules.[2] On October 5, 1972, Advance filed a letter in which it asked that the grant of CAC-442 be set aside.

2. In support of its "Petition for Special Relief," Advance alleges that it and Plymouth both hold non-exclusive franchises for Plymouth: that a grant of the above-captioned applications would potentially violate Section 76.501(a) of the Rules[3] since Valley is equally owned by the licensees of the three television broadcast stations which place

[1] Plymouth CATV Services, Inc., is a wholly owned subsidiary of Valley Cablevision, Inc.

[2] Section 0.289(c)(12) of the Rules provides a delegation, "To act on applications for certificates of compliance which conform to applicable rules and regulations, and are either unopposed or whose disposition is governed by established Commission policy."

[3] Section 76.501(a) of the Rules provides that, "No cable television system (including all parties under common control) shall carry the signal of any television broadcast station if such system directly or indirectly owns, operates, controls, or has an interest in:
(1) A national television network (such as ABC, CBS, or NBC); or
(2) A television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of this chapter, overlaps in whole or in part the service area of such system (i.e., the area within which the system is serving subscribers); or
(3) A television translator station licensed to the community of such system.

predicted contours over Plymouth;[4] that the cross-interest here involved apparently was in existence prior to July 1, 1970, and hence need not be disposed of before August 10, 1973; that a grant of the application will either allow the later sale of the certificate at a higher price—thus allowing a form of trafficking in franchises—or furnish the basis for a waiver of Section 76.501 of the Rules which is not otherwise warranted; and that the application should therefore be denied. And the "Motion to Consolidate Proceedings" in effect restates these arguments.

3. At the outset, we are advised by the Chief, Cable Television Bureau, that the delegated grant was inadvertent and taken without knowledge of Advance's filings of August 31, 1972. Accordingly, it is clear that we must set aside this action and consider the above-captioned application on its merits. In doing so, however, we are troubled by the procedure which has been followed by Advance in raising its objections. Section 76.27 of the Rules[5] requires that an objection to an application for certificate of compliance be filed within thirty days of public notice of its filing. For us to allow a later filed petition for special relief filed pursuant to Section 76.7 of the Rules to have the same effect as a timely filed objection could have the practical effect of eliminating the thirty day filing requirement of Section 76.27 by encouraging objecting parties not to object pursuant to Section 76.27 but instead to delay objection until Commission action seems close and then to object under Section 76.7.

4. It is impossible to prevent this procedure entirely since the Commission can hardly establish formal filing requirements which would shut it off from consideration of serious public interest allegations. On the other hand, it seems reasonable to try to discourage such tactics as much as possible. A similar problem used to occur in connection with petitions for reconsideration filed in connection with broadcast applications which had not been protested before Commission action. This problem was largely solved in the broadcast area by adoption of Section 1.106(c) of the Rules. We believe a similar procedure will be helpful in connection with petitions for special relief directed against applications for certificates of compliance. Consequently, in the future, we will expect that a party filing a petition for special relief pursuant to Section 76.7 where an objection under Section 76.17 could earlier have been filed will show that:[6]

(*a*) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters pursuant to Section 76.17;

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[4] Michiana Telecasting Corp., licensee of Station WNDU–TV, South Bend, Indiana; South Bend Tribune, licensee of Station WSBT–TV, South Bend, Indiana; and Truth Publishing Co., licensee of Station WSJV, Elkhart, Indiana.

[5] Section 76.27 of the Rules provides that, An objection to an application for certificate of compliance or an amendment thereto shall be filed within thirty (30) days of the public notice described in § 76.25. A reply may be filed within twenty (20) days after an objection is filed. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them. All pleadings shall be served on the persons specified in § 76.13, the cable television system, the franchising authority, and any other interested person. Controversies concerning carriage (Subpart D) and program exclusivity (§ 76.91) will be acted on in connection with the certificating process if raised within thirty (30) days of the public notice; any other objection will be treated as a petition for special relief filed pursuant to § 76.7.

[6] We expect to change our rules formally in order to reflect this change in policy.

(*b*) The facts relied on were unknown to petitioner until after his last opportunity to present such matters, and he could not through the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(*c*) The Commission must determine that consideration of the facts relied on is required in the public interest.

Fortunately, we need not apply this test in the present case since—as explained below—resolution of Advance's objections is clear cut under the rules.

5. Section 76.501(b) of the Rules provides that pre-existing cross-ownership situations may continue until August 10, 1973. Nonetheless, Advance opposes Plymouth's certification on grounds that it will either make Plymouth's certificate more valuable (for purposes of possible transfer and resultant "trafficking"[7]), or lead to an otherwise unjustified waiver of Section 76.501. The first argument may be accurate but still is unpersuasive. This possibility was implicit when the Commission adopted its cross-ownership rules, but nonetheless we have never delayed system operation simply because of eventual need to comply with the cross-ownership rules. Nor has Advance persuaded us of a need now to do so. No request for waiver of Section 76.501 is before us so it seems premature to anticipate its disposition. In any event, it does not appear that a ruling on such a request would be dispositive of the present controversy.[8]

6. In view of the foregoing, the Commission finds that the following actions are consistent with the public interest, convenience, and necessity.

Accordingly, IT IS ORDERED, That the September 26, 1972, action of the Chief, Cable Television Bureau, granting CAC–442 IS SET ASIDE.

IT IS FURTHER ORDERED, That the "Motion to Consolidate Proceedings" filed August 31, 1972, by Advance Brands, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" filed August 31, 1972, by Advance Brands, Inc., directed against CAC–442 IS DENIED.

IT IS FURTHER ORDERED, That CAC–442 IS GRANTED in accordance with specifications to be issued.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[7] This seems unduly critical of Plymouth which gave its Section 74.1105 notice June 30, 1967, and has apparently been prepared to proceed since then whenever it could obtain distant signals. By contrast, it does not appear that Advance either gave Section 74.1105 notice or filed an application for a certificate of compliance.

[8] As is clear from the tenor of our other actions, we do not believe it necessary to grant Advance's "Motion to Consolidate Proceedings." Consequently, we will consider CAC–658 separately at a later date.

F.C.C. 72-998

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of RCA GLOBAL COMMUNICATIONS, INC. Application for Authorization, Pursuant to Section 214 of the Communications Act of 1934, To Lease and Operate Satellite Voice Circuits Between the Continental United States and Hawaii	Files Nos. T-C-2033, T-C-2033-A, T-C-2033-A-1, T-C-2033-A-2, T-C-2033-A-3, T-C-2033-A-4
RCA GLOBAL COMMUNICATIONS, INC. Application for Authorization, Pursuant to Section 214 of the Communications Act of 1934, To Lease and Operate Satellite Voice Circuits Between and Among Continental United States, Hawaii, Guam, and Points in the Pacific Area	Files Nos. T-C-2039, T-C-2039-A, T-C-2039-A-1, T-C-2039-A-2, T-C-2039-A-3, T-C-2039-A-4

MEMORANDUM OPINION AND ORDER

(Adopted November 8, 1972; Released November 13, 1972)

BY THE COMMISSION: COMMISSIONERS JOHNSON AND REED CONCURRING IN RESULT.

1. On June 27, 1972 the Hawaiian Telephone Company (HTC), pursuant to Sections 1.104(b) and 1.115 of our Rules, filed an Application for Review by the full Commission of the action taken herein by the Telegraph Committee on June 8, 1972.[1] HTC seeks review of the Telegraph Committee's action insofar as it grants RCA Global Communications, Inc. (RCA) authority to provide leased channel voice service via satellite between the United States Mainland and Hawaii. An opposition to the Application was filed by RCA on July 17, and a reply to the RCA opposition was filed by HTC on July 21.

2. In the action complained of, the Telegraph Committee granted applications of RCA for authority under Section 214 of the Communications Act to acquire and operate satellite circuitry between the Mainland and Hawaii. As is customary in such actions, the Committee listed the services which could be provided by RCA over the granted facilities and, for the first time, authorized RCA to provide satellite leased channel voice service between the Mainland and Hawaii, in addition to the voice/data and telegraph leased channel services. Until this action, leased channel voice service was provided only by HTC and its Mainland correspondent, the American Telephone and Telegraph Company (AT&T). Although RCA had been authorized to provide

[1] F.C.C. 72M-754 released June 9, 1972.

voice service via HF radio,[2] it had never in fact implemented this authorization and had been authorized to discontinue its point-to-point HF radio operation in Hawaii several years ago.

3. Neither RCA nor any other international record carrier is authorized to provide such service by cable.

4. The Telegraph Committee, in authorizing RCA to provide satellite leased channel voice service, noted that the Commission had consistently held that AT&T and HTC could provide, between the Mainland and Hawaii, all services provided by AT&T on the Mainland, including (in addition to message voice services) alternate voice/data, DataPhone and leased services. It also noted that such companies were in direct competition with the international record carriers in providing record services or leased circuits for alternate voice/data use and facsimile services, whereas such competition has been excluded for all other overseas points. In view of the competitive imbalance faced by the record carriers on the Mainland/Hawaii route, the Telegraph Committee concluded that it was equitable and in the public interest to allow RCA to compete for leased channel voice services, since AT&T and HTC can provide record services between Hawaii and the Mainland. The Committee also noted that RCA had been authorized to provide such service via HF radio. It then went on to say that the economic impact on AT&T and HTC would be *de minimis*, noting that AT&T (which operates with HTC) had at year-end 1971 some 32 leased circuits of which seven were pure voice. Calculating the total revenues from such seven channels as $502,800,[3] the Committee compared these figures to estimated AT&T/HTC 1971 revenues from both message telephone and leased channel service of some $55–60,000,000, and found that less than one percent of such revenues might be potentially affected by the grant.

5. HTC, requesting opportunity for oral argument, takes the position in its application for review that the June 8 authorization, insofar as it gives RCA the disputed authority, should be reversed and set aside for the following reasons:

(*a*) *It is in conflict with statutory, case, and other precedent.*—To grant the RCA application, the Commission must be able to certify, under Section 214 of the Communications Act, that the public convenience or necessity requires or will require the proposed acquisition of the satellite channels in question by RCA for the service proposed—leased channel voice service. Further, under this standard the Commission must apply the criteria set down by the Supreme Court in *F.C.C.* v. *RCA Communications, Inc.*, 346 U.S. 86 (1953), i.e., the Commission cannot assume that competition is beneficial but must go further and make a finding that competition is reasonably feasible and will serve some beneficial purpose. However, the Telegraph Committee referred only to "competitive pressures" faced by the international record carriers on the Mainland/Hawaii route, followed by a statement that it appeared "equitable and in the public interest" to allow RCA to compete with HTC and AT&T for leased channel voice service "in view of the fact that AT&T and HTC can provide record serv-

[2] *AT&T–RCA Communications, Inc.*, 27 F.C.C. 271 (1959).
[3] HTC correctly points out that this figure (which appears to be a typographical error) should be $562,800.

ices between these points". There is no reference to the public or to benefits to the public that might warrant the initiation of competition. There is no data in the record, e.g., with respect to services to be offered, rates to be charged, or size of the market, to make the public interest finding required by *F.C.C.* v. *RCA Communications, Inc.*, other than outdated information used in 1959 by the Commission in *AT&T* v. *RCA Communications*, 27 F.C.C. 271, when RCA was authorized to provide HF radio service, including private line voice service, between Hawaii and the Mainland. However, such radio service and facilities were discontinued by RCA without it ever having provided leased channel voice service.

(*b*) *It involves questions of law and policy not previously passed on by the Commission.*—The Telegraph Committee does not have authority to determine policy questions, but is limited by Section 0.214 of the Commission's Rules on delegation to authorizing record carriers to acquire telegraph facilities for telegraph service. The grant at issue, though, establishes a new policy of competition in the providing of voice communications service in the international field. Its impact is not minimized by the fact that it states that it is confined to service with Hawaii and does not constitute a precedent in any consideration of further applications to provide such service or services to other points, since, once having authorized voice service, the Commission may authorize additional voice circuits as "the supplementing of existing facilities, without regard to the provisions of [Section 214]." There is a question as to whether the intent of the order is not to allow other record carriers to also provide the service, and whether such service is to be limited to satellite facilities. *AT&T* v. *RCA Communications, supra*, cannot justify the present grant, as suggested by the Telegraph Committee, since thirteen years have gone by and RCA never implemented the authority given therein to provide HF radio leased channel voice service, for which it had proposed a 40 percent reduction from then existing rates. Moreover, in those years, only the telephone carriers have provided voice leased channel service.

(*c*) *It contains erroneous findings as to material questions of fact.*—Where the grant does purport to address itself to facts, it is illogical and misleading in that it compares private line voice service annual revenues of some half-million dollars (seven circuits at annual charges of $80,400 per circuit) to AT&T/HTC combined private line and message service revenues of some $50–60 millions. The correct comparison is to the AT&T/HTC total leased channel revenues of some $2.5 millions in 1971. Such a comparison shows that almost 25 percent of such revenues can be affected, with HTC, which is smaller than AT&T, suffering relatively more. Moreover, even if the effect were *de minimis*, it could not be "cavalierly" dismissed, in view of *Interstate Broadcasting Company* v. *F.C.C.*, 285 F. 2d 270 at 272 (D.C. Cir. 1960) and *FTC* v. *Morton Salt*, 334 U.S. 37 at 48–49 (1948). In the final analysis, the economic effect on HTC, which is of no decisional standing alone, cannot be minimized while at the same time there is acceptance (as the grant seems to do in paragraph 14) of the RCA contention that the great difference between AT&T revenues and record carrier revenues is attributable, to a great extent, to AT&T/HTC authority to provide leased channel voice services.

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6. In conclusion, HTC says that the overall policy issue involved—whether the public interest requires that international record carriers be authorized to provide pure voice communications between the Mainland and Hawaii—was not properly and adequately considered or previously presented to and resolved by the Commission.

DISCUSSION

7. We address ourselves first to the competency of the Telegraph Committee to act in this matter. We think it had such competency, for our delegations of authority to that Committee, and to its companion Telephone Committee, composed of the same Commissioners, contain no language limiting their authority to matters not involving policy determinations. Where either Committee believes the full Commission should consider a particular issue, it has the discretion to refer the matter to the Commission. And, where the full Commission believes that it should rule on a matter, rather than one of the Committees, we have the ability to do so.[4]

8. Moreover, the Telegraph Committee did follow precedent established by the full Commission in *ITT World Communications Inc.*, File No. T–C–1910, 2 F.C.C. 2d 573 (1966). In that proceeding we ruled favorably on an application by ITT filed under Section 214 for modification of existing authority so that it might carry voice alternately with data between Hawaii and the Mainland on its Datel Service. Such service, a high speed data exchange service with a three-minute-minimum charge, theretofore allowed a customer to use voice only for cue and contact control. ITT sought to enlarge the voice use so as to permit customers to converse, and allow the Datel Service to be more competitive with the Data-Phone Service, a short-period alternate voice/data service which had recently been instituted between the Mainland and Hawaii by AT&T and HTC.

9. Both AT&T and HTC had opposed the ITT request, HTC arguing that there was no showing of public need for the proposed ITT service. However we granted the ITT application (and similarly modified RCA's Datel Service authorizations), noting that AT&T and HTC had instituted Data-Phone Service [5] shortly after ITT and RCA had each instituted a three-minute minimum Datel Service between the Mainland and Hawaii. We pointed out that we had consistently held that (contrary to other policy on all other overseas points) AT&T and HTC could offer over this route all services offered by AT&T on the Mainland. This placed them in direct competition with record carriers in such services as telegraph leased channel, program transmission, and alternate voice/data leased channel. It appeared to us that ITT was merely asking for the right to compete on a more equal basis with AT&T and HTC in providing a service similar to Data-Phone. We

[4] HTC appears to suggest that the matter should in any event have come to the full Commission, since our delegation to the Telegraph Committee authorizes it to act on record carrier applications to acquire telegraph facilities for use in telegraph services, and the delegation to the Telephone Committee authorizes it to act on *voice* carrier applications. However, we intend our delegation to the Telegraph Committee to cover record carrier applications involving voice services, to complement the Telephone Committee's authority to act on voice carrier applications involving record services.

[5] We upheld their right to do so in *American Telephone and Telegraph Company, Tariff F.C.C. No. 132 (5th Revised Page 10CB)*, 38 F.C.C. 1222 (1965) and 1 F.C.C. 2d 374 (1965).

concluded that we should not compound the advantage that the voice carriers had by continuing a restriction on the voice use the customers of the record carriers may make of the DATEL service.

10. In upholding AT&T's right to provide Data-Phone Service, we found that such service would have no adverse impact on the record carriers. We found that the reverse was equally true of expanded Datel Service authority, i.e., that there would be no serious effect on AT&T and HTC. We pointed out that the revenues of AT&T and HTC combined, from message telephone service between the Mainland and Hawaii, were about ten-fold that derived by the record carriers provision of telegraph services, and that the revenues of AT&T and HTC from leased channel service also substantially exceeded that of the record carriers. We further stated that in the absence of a showing of a serious adverse effect on AT&T and HTC, which showing is notable by its very absence, equity demands that we accord the record carriers some of the benefits to be derived from [the new high-capacity telephone type cables], rather than leave AT&T and HTC in a monopoly position, as they would have it. By any test, it is clear that the impact of the requested authorization upon AT&T and HTC would be minimal, whereas a denial would magnify the already major disadvantages suffered by the record carriers in their competitive efforts. *ITT World Communications Inc., supra* at 577.

11. The elements which persuaded us in that case to rule favorably on ITT's application for authority appear to be present in the instant case. AT&T, with its correspondent HTC, are still in a favored position on the Mainland/Hawaii route in that they can provide on that route services which are exclusively provided by the record carriers on all other routes out of the Mainland. Also HTC, for service out of Hawaii, is not bound by the restrictions that apply to AT&T in its normal Mainland/overseas services, and, although a voice carrier, it competes with the record carriers operating in Hawaii for voice/record, voice/data and other leased channel services as well as other services from Hawaii to overseas points. Accordingly, it appears to us that the Telegraph Committee's decision followed the policy and precedent we enunciated in the ITT proceeding that, absent a showing of serious adverse effect on AT&T and HTC, it is equitable to accord the record carriers the benefits to be derived from modern facilities (even though they be satellite rather than cable as in the ITT case), rather than leave AT&T and HTC in a monopoly position. This policy is equally applicable herein even though the modern facility is the Intelsat IV satellite rather than the Hawaii/Mainland cable.

12. In order to fully appreciate the current situation, it is necessary to review the reasons underlying the authorizations given telephone carriers to provide in this one instance non-voice services via overseas cable facilities. In 1955 AT&T applied together with HTC for authority to land and operate a cable on this route. This first Mainland/Hawaii cable was justified at that time primarily on national defense grounds. It was alleged that AT&T was the only carrier willing to install the cable at that time and AT&T then argued that such a cable could not be justified on the basis of telephone traffic alone until the middle of the next decade. Therefore, it concluded that the

cable could not be installed and be commercially viable unless the Commission authorized AT&T to provide over the cable the same services as it did on the Mainland. We agreed with AT&T and, looking at the effect of such grant on the record carriers, felt that such authorization would not directly affect Mackay Radio and Globe Wireless, two of the record carriers serving Hawaii. Insofar as RCA, the third record carrier, was concerned we found that the national defense outweighed any losses to RCA. It is true that the Commission felt such losses would be minor; however in so concluding, it looked at RCA's world-wide revenues rather than its revenues from the Mainland/Hawaii route, and rather than its revenues from the services which might be duplicated by AT&T and HTC. Moreover, the Commission, in making its grant, agreed that no support had been given by AT&T for entry into the record field as would have been required under ordinary circumstances. However, the Commission believed that the situation was not a normal one in view of the national defense need. *American Telephone and Telegraph Company*, Files Nos. P–C–3630 and S–C–L–14, F.C.C. 55–1128.

13. It is relevant to note that subsequent events did not substantiate AT&T's pessimistic view of the situation. Traffic grew very quickly and a second cable was laid in 1964. We now have satellite facilities providing well over 200 circuits and an application for a third cable is pending. Under these circumstances, the reason for permitting AT&T and Hawaiian to provide *any* type of record service no longer obtains. Nevertheless, we are not addressing ourselves to this aspect of the matter. However, it is sufficient to note that HTC has been the beneficiary of a policy which, as a special exception, for over two decades allowed it to compete for record traffic between Hawaii and the mainland. HTC is therefore in a very poor position legally or logically to object to reasonable competition now from the record carriers in the leased voice field. We specifically reject the proposition that the carriers (AT&T and HTC) accounting for about 85% of the Mainland/Hawaii communications revenues [6] should be free to compete for record traffic but that the smaller and less important entities should be precluded from competing for voice-grade traffic. We might note that the only current apparent justification for a continuation of authority to AT&T and HTC to continue to compete in the record field for Hawaii/Mainland traffic is that this competition is reasonably feasible. If it is reasonably feasible for AT&T and HTC to compete for a $9 million market already served by these carriers, it would appear almost axiomatic that competition is reasonably feasible in a $53 million market which is now an AT&T–HTC monopoly. Insofar as public benefit is concerned, it is sufficient to note that wherever competition has been introduced we have found considerable benefit in the way of better service, responsiveness to public demand, and generally lower rates with substantial increases in volume and often

[6] Of a 1971 total of $62,436,134 for all communications services, AT&T and HTC received $52,890,901 or 84.7%, while all the record carriers combined received $9,545,223 or 15.3%.

profitability.[7] We anticipate that a similar benefit may appear in the instant case.[8]

14. HTC claims that the Telegraph Committee, in assessing the effect on AT&T and HTC of its authorization, should have compared the AT&T/HTC leased voice channel revenues of $562,800 to total AT&T/HTC leased channel revenues of $2,500,000 in 1971, rather than to the latter figure plus telephone message service revenues. It argues that on such a basis, the potential revenue loss to it is almost 25 percent of its private line revenues. As indicated above, we have not normally applied a similar test on this route to particular services and therefore do not adopt the argument as a basis for decision making. However we believe that even by the proposed HTC test there is ample basis for the findings and conclusions HTC argues are necessary to the RCA grant. First, it is relevant to note that the Telegraph Committee, in developing its figures, relied on data contained in AT&T's response to Part 43.61 of our Rules for year-end 1971, which showed 32 voice-grade leases by AT&T and HTC at year-end 1971. However, since that time AT&T has amended its section 43.61 report to show 37 private telephone leases, plus the lease of a 48 kHz satellite wideband, subdivided into 12 voice-grade circuits, and one voice-grade circuit multiplexed into 16 telegraph-grade circuits (2 of which were leased, 14 were idle), for a total of 49 voice-grade leased circuits and 2 telegraph circuits.

15. On this basis, it appears that total leased circuit revenues to AT&T and HTC for 1971 were in the order of $4,000,000 on an annual basis, and that seven voice leases comprised almost $562,800 of this figure. The impact on HTC, accepting, *arguendo*, HTC's position, is then about a 14.1 percent potential loss of revenue. However, such a potential loss is remote, if not academic, because any loss which may be incurred by AT&T and HTC is more likely to be in new, rather than existing business. We are reinforced in this belief by the knowledge that RCA has presently acquired new leases, so that its voice authority is sought for that purpose rather than to take existing business. Further, in reviewing the amended 3d Hawaiian cable application [9] filed by AT&T and HTC, we note that they forecast an increase in voice-grade leased channel business, so that by 1980 the 49 leases are expected to increase to 121.[10] In view of this, it appears that even on HTC's own ground of comparison, competition is reasonably feasible and as noted above, our experience with this area leads us to believe that it can benefit the public in both charges and quality of service.

16. Aside from the benefits to the public which we have indicated above, we think that there is a further public benefit—that stemming from the viability of the record carriers which we sought to protect by our TAT–4 decision. As we have noted, the Mainland/Hawaii route

[7] *Specialized Common Carrier Services*, 29 F.C.C. 2d 870 (1971).

[8] It is relevant to note that when we authorized RCA in 1959 to provide leased channel voice service between the Mainland and Hawaii by means of high-frequency radio, *American Telephone and Telegraph Company and RCA Communications, Inc.*, Dockets Nos. 11954 and 11955, 27 F.C.C. 271 (1959), AT&T and HTC apparently had no objection to such authorization, and it appeared that both would interconnect their domestic systems with RCA.

[9] File Nos. P–C 8241.

[10] AT&T and HTC forecast a growth in message telephone circuits from 287 to year-end 1971 to 1765 at year-end 1980.

was an exception to this protection in that voice carriers may provide record carrier services. As we have also noted, it appears that a considerable amount of the rationale for the exception has been dissipated with the passage of time. By permitting the record carriers to compete with the voice carriers on this route where competition is reasonable, feasible, such action will, in a minor way, restore the parity which was upset by the special treatment given AT&T and HTC on the Mainland/Hawaii route. Therefore, the Telegraph Committee's action in the instant case, is in the public interest.

17. In view of the above, we must deny the relief sought by HTC, and affirm the grant made by the Telegraph Committee.

18. Accordingly, IT IS ORDERED that the relief sought by Hawaiian Telephone Company in its Petition for Review is DENIED, and the action of the Telegraph Committee complained of is AFFIRMED as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-921

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MR. JOEL ABER, CAMPAIGN DIRECTOR, ALICE CONNER FOR U.S. SENATE, GEORGIA SOCIALIST WORKERS CAMPAIGN AGAINST WSB-TV, ATLANTA, GA.

ORDER

(Adopted October 12, 1972; Released October 13, 1972)

BY THE COMMISSION:

1. The Commission has before it an Application for Review filed on September 11, 1972 by Joel Aber, Campaign Director, Alice Conner for U.S. Senate, Georgia Socialist Workers Campaign, of the ruling of the Broadcast Bureau of August 22, 1972, F.C.C. 2d .

2. Pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-989

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 83.164 OF THE RULES TO CLARIFY AND IMPROVE REQUIREMENTS CONCERNING SERVICING OF SHIP RADAR STATIONS	Docket No. 19253

REPORT AND ORDER

(Adopted November 8, 1972; Released November 13, 1972)

BY THE COMMISSION:

1. A Notice of Proposed Rule Making in the above-captioned matter was released on May 28, 1971. The dates for filing comments or replies thereto have passed.

2. Comments were filed by: The American Radio Association, AFL-CIO and the Radio Officer's Union, AFL-CIO (ARA/ROU); The American Institute of Merchant Shipping (AIMS); Sun Transport, Inc. (SUN); ITT Decca Marine, Inc. (ITT); the National Marine Electronics Association, Inc. (NMEA); The American Petroleum Institute (API); Kelvin Hughes; and the Radiomarine Corporation. Reply comments were filed by ARA/ROU and NMEA.

3. ARA/ROU and NMEA supported the proposed rule amendments. ARA/ROU suggested that the rule be even further amended to prohibit fuse replacement except by a holder of a radio operator license with radar endorsement. AIMS addressed itself only to that portion of the proposed amendment which would prohibit replacement of "receiving-type" tubes except by a licensed radio operator with radar endorsement, which AIMS opposed. SUN opposed the proposed amendments on the grounds that they were inconsistent with progress being made in the state-of-the-art of radar maintenance, specifically regarding "plug in modules". ITT opposed the proposed amendments, citing a shortage of qualified radio operators with radar endorsements. API opposed the proposed amendments on operational and technical grounds. Specifically, API also cited progress in the state-of-the-art and suggested that Intergovernmental Marine Consultative Organization (IMCO) design and operational standards for mandatory radar be considered in conjunction with any amendment of the Rules regarding radar maintenance. Kelvin Hughes also opposed the proposed amendments and cited progress in the state-of-the-art and plug in modules as developments warranting amendment of the Rules. Radiomarine Corporation opposed the proposed amendments on the grounds that they would be unduly restrictive and suggested that new and more relaxed rules on this subject are needed.

4. Many of the comments went considerably beyond the intended

scope of this proceeding. In releasing the Notice of Proposed Rule Making in this proceeding, it was not the intention of the Commission to examine the entire subject of radar maintenance requirements, standards and procedures. Rather, this proceeding was primarily intended to clarify the intent of an existing policy, incorporated in Section 83.164 of the Rules, which requires that "adjustments or tests during or coincident with the *installation, servicing, or maintenance*" (emphasis supplied) of a ship station radar be performed by or under the immediate supervision of a person properly licensed with the radar endorsement. In addition, many of the comments addressed areas which involve normal rendition of service rather than adjustments or tests during installation, servicing, or maintenance. Section 83.164 distinguishes between "normal rendition of service" and "installation, servicing, or maintenance" of the equipment. Normal rendition of service does not require a radio operator's license with radar endorsement and this area was not a subject of this notice of proposed rule making. Accordingly, to the extent that the comments submitted addressed the entire subject of radar maintenance or areas which involve normal rendition of service, they are not germane to the instant proceeding and will not be considered. The Commission is aware of developments in the state-of-the-art in the field of marine radars and intends to consider them, as well as the proceedings and findings of organizations such as IMCO and the Radio Technical Commission for Marine Services (RTCM) in any future amendments of its Rules concerning radar maintenance.

5. We agree with those comments which opposed deletion of the proviso which permits unlicensed persons to replace receiving-type tubes. We know of no instances, nor have any been cited to us, where replacement of receiving-type tubes by unlicensed persons has resulted in improper operation of ship station radar equipment. Accordingly, we do not adopt the proposed rule amendment which would delete the words "or of receiving-type tubes" from the proviso clause of Section 83.164(a)(2) of the Rules.

6. We do adopt the proposed rule amendment to delete the words "while it is radiating energy" from 83.164(a)(2) of the Rules. In doing so, the Commission does not intend to make any substantial change in its requirements that only properly licensed persons with the radar endorsement, or persons under the immediate supervision of a person so licensed, be permitted to perform adjustments or tests during or coincident with the installation, servicing, or maintenance of radar equipment. The purpose of this deletion is to preclude a construction of the Rule which would permit any such adjustments or tests to be made in any manner by any person merely because the equipment was not radiating energy at the time the tests or adjustments were made. Such a construction of the Rule would be inconsistent with competent installation, servicing, or maintenance of radar equipment and with ongoing Commission policy relating thereto. An examination of broader matters relating to ship station radar requirements, standards and procedures is not appropriate in the context of this limited proceeding.

7. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i) and 303(f) and (r) of the

Communications Act of 1934, as amended, Part 83 of the Rules and Regulations of the Commission IS AMENDED, effective December 22, 1972, as set forth in the attached Appendix.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Section 83.164(a)(2) of the Rules is amended as follows:

Section 83.164 Waivers of operator requirements.

(a) * * *

(2) All adjustments or tests during or coincident with the installation, servicing, or maintenance of the equipment must be performed by or under the immediate supervision and responsibility of a person holding a temporary limited radiotelegraph operator license or a first- or second-class commercial radio operator license, radiotelephone or radiotelegraph, containing a ship-radar endorsement, who shall be responsible for the proper functioning of the equipment in accordance with the radio law and the Commission's rules and regulations and for the avoidance and prevention of harmful interference from improper transmitter external effects: *Provided, however,* That nothing in this sub-paragraph shall be construed to prevent persons not holding such licenses, or not holding such licenses so endorsed, from making replacement of fuses or of receiving type tubes.

* * * * * * *

F.C.C. 72-842

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of an Application of SOUTH DAKOTA CLEARVIEW CABLE CO., INC., SIOUX FALLS, S. DAK. For Certificate of Compliance Pursuant to Part 76, Subpart B of the Commission's Rules	CAC-82 (SD018)

MEMORANDUM OPINION AND ORDER

(Adopted September 20, 1972; Released September 26, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE ABSENT.

1. South Dakota Clearview Cable Company, Inc., has applied for a certificate of compliance to begin cable television service in Sioux Falls, South Dakota, a major television market (Sioux Falls-Mitchell, South Dakota, #85). Apart from objections filed by professional sports interests, this application has been opposed by Sioux Falls Cable Television, a prospective competitor of the applicant in this market. We ruled recently that sports objections would be considered in connection with our deliberations in *Docket 19417* and not in the certificating process; see FCC 72-646.

2. The applicant intends to commence service with the following signals:

KELO-TV (CBS, Channel 11), Sioux Falls, South Dakota
KSOO-TV (NBC, Channel 13), Sioux Falls, South Dakota
KUSD-TV (Educ., Channel 2), Vermillion, South Dakota
KESD-TV (Educ., Channel 8), Brookings, South Dakota
KORN-TV (ABC, Channel 5), Mitchell, South Dakota
KCAU-TV (ABC, Channel 9), Sioux City, Iowa
KTIV (NBC, Channel 4), Sioux City, Iowa
WTCN-TV (Ind., Channel 11), Minneapolis, Minnesota
KWGN-TV (Ind., Channel 2), Denver, Colorado

The carriage of these signals and its proposal regarding access channels are consistent with the provisions of our Rules.

3. Sioux Falls Cable Television objects to certification on the grounds that the franchise awarded South Dakota Clearview did not comply with the franchise standards of § 76.31 of the rules in the following particulars: that (1) its qualifications were not scrutinized by the franchising authority "as part of a full public proceeding affording due process"; (2) the ordinance does not require significant construction to be accomplished within one year of receiving certification; (3) the initial franchise period (20 years) exceeds a reasonable duration; (4) changes in rates could be authorized without convening a

public proceeding affording due process; (5) there is no provision in the franchise for the investigation and resolution of subscriber complaints; and (6) there is no showing that the prescribed franchise fee of 5% of annual gross receipts or $5,000.00, was reasonably in excess of the 3% standard enunciated in our franchise guidelines. South Dakota Clearview returned to the franchising authority, and its franchise was amended in response to these objections. As a consequence, the applicant is now required to complete one-half its scheduled construction within one year of receiving the Commission's certification; the duration of the franchise has been reduced to fifteen years, renewal for five years; subscriber rates can only be changed following a "full public proceeding with notice to the public of the proposed rate increase"; subscriber complaints must be investigated and a business office maintained during normal working hours; the annual franchise fee has been reduced to 3%.

4. The franchise, as amended, now complies with the standards of § 76.31 of the Rules. However, there remains one issue to be resolved: was the franchise, as initially awarded and subsequently amended "approved by the franchising authority as part of a full public proceeding affording due process", as required by § 76.31(a)(1). The applicant has submitted affidavits of a stockholder in South Dakota Clearview and the City Auditor of Sioux Falls, South Dakota, which attest to a procedure of a first public reading of the ordinance awarding the franchise, followed by a second reading one week later, legal publication in a local newspaper, with the ordinance becoming effective on March 9, 1972, as no referendum to set aside this ordinance was filed.[1] The City Auditor avers that this same procedure was followed in the course of amending the franchise. The proposed amendments to the franchise were first publicly read on May 22, 1972, a second "public reading" occurred May 30, 1972, followed by legal publication on June 1, 1972. No referendum was filed to set aside the amended franchise, which then became effective June 22, 1972.

5. In the *Cable Television Report and Order*, 72–108, 37 Fed. Reg. 3252 (1972), we described the proceedings we expected to attend the award of a franchise:

> We expect that the franchising authority will publicly invite applications, that all applications will be placed on public file, that notice of such filings will be given, that where appropriate a public hearing will be held to afford all interested persons an opportunity to testify on the qualifications of the applicants, and that the franchising authority will issue a public report setting forth the basis of its action. (Paragraph 178)

It appears that many of the foregoing components of the public proceeding we had contemplated were elements of the process by which a

[1] In his affidavit, David V. Vrooman, a director and stockholder in South Dakota Clearview described the procedure thusly:

On February 7, 1972, a full hearing was had and the first reading of the ordinance was made at the official Commission meeting attended by both radio, press, and the general public, at which time a presentation was made by David V. Vrooman again reiterating the financial background, backing, technical know-how, management, etc., for this corporation, and all questions were answered to the satisfaction of the Commission and general public. The second reading of the ordinance was held on February 14, 1972, at which time members of the School Board, representatives of the Catholic schools and two private colleges appeared and asked questions regarding the educational channels which would be provided and other technical questions. Questions were asked by other people in the community as to the effect of cable television, but no further questions were asked at this time regarding the financial or technical ability of South Dakota Clearview Cable Company, Inc.

franchise was first awarded South Dakota Clearview Cable Company, and subsequently amended. This conclusion is all the more compelling when we take note of the fact that South Dakota Clearview served a copy of its amended application containing these averments upon counsel for Sioux Falls Cable Television, who interposed no further objection.

In view of the foregoing, we are satisfied that the franchise was awarded pursuant to a "full public proceeding affording due process", and a certificate of compliance will be issued to South Dakota Clearview Cable, valid until March 9, 1987.

Accordingly, IT IS ORDERED, That the captioned application for certificate of compliance filed by South Dakota Clearview Cable, Inc., IS GRANTED.

IT IS FURTHER ORDERED, That the "Petition to Deny", filed by Sioux Falls Cable Television, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

37 F.C.C. 2d

F.C.C. 72-890

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of SOUTHERN BROADCASTING CO. (WGHP-TV), HIGH POINT, N.C. For Renewal of Broadcast License	Docket No. 18906 File No. BRCT-574
FURNITURE CITY TELEVISION CO., INC., HIGH POINT, N.C. For Construction Permit for New Television Broadcast Station	Docket No. 18907 File No. BPCT-4302

ORDER

(Adopted October 5, 1972; Released October 18, 1972)

BY THE COMMISSION: COMMISSIONER HOOKS DISSENTING AND ISSUING A STATEMENT IN WHICH COMMISSIONER JOHNSON JOINS; COMMISSIONER REID ABSENT.

1. Before us for consideration is an interlocutory application for review filed May 16, 1972, by Furniture City Television Company, Inc. seeking review of a Review Board Memorandum Opinion and Order, FCC 72R-132, 34 FCC 2d 908, released May 9, 1972.[1]

2. Accordingly, IT IS ORDERED, That the motion to accept late filing. filed by Southern Broadcasting Company IS GRANTED and the application for review filed by Furniture City Television Company, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

DISSENTING OPINION OF COMMISSIONER BENJAMIN L. HOOKS IN WHICH COMMISSIONER NICHOLAS JOHNSON JOINS

In this comparative proceeding for a television station, one of the competing applicants has requested inspection of the other's [presently the station licensee] Annual Financial Reports (FCC Forms 324)[2] to determine, allegedly, what portion of the licensee's profits have been plowed back into the station for public interest programming.

Although the Commission has not, to date, utilized profit reinvestment in public service programming as a yardstick to measure the past performance of an existing licensee, *Alianza Federal De Pueblos*

[1] Also before us for consideration are: (a) an opposition to the application for review filed May 23, 1972, by the Broadcast Bureau, (b) a motion to accept late filing and an opposition to the application for review filed May 24, 1972, by Southern Broadcasting Co., and (c) a reply to oppositions filed June 5, 1972, by Furniture City. The other parties have given their consent to acceptance of Southern's opposition pleading, the disposition of this matter has not been delayed, and thus Southern's request may be granted.

[2] While Forms 324 are "not routinely available for public inspection" under § 0.457(d) of our rules (47 CFR § 0.457(d)), the Commission has released licensees' Annual Financial Reports in the context of license battles. See, *Carrol Broadcasting Co. v. FCC*, 103 U.S. App. D.C. 346, 436 F. 2d 440 (1958); *Cape Cod Broadcasting Co.*, 23 F.C.C. 2d 277 (1970).

Libres, 31 FCC 2d 557 (1970), the Court of Appeals for the District of Columbia has said that it can. *Citizens Communications Center* v. *FCC*, 141 U.S. App. D.C. 109, 436 F. 2d 263, 22 RR 2d 2001 (D.C. Cir. 1970).[3] On Petition for Mandamus in *Citizens*, the Court indicated that in establishing a profit reinvestment criterion, the Commission—if it so desired—could proceed on a case-by-case basis rather than explore the imposition of such a standard via Rule Making proceeding.[4]

Moreover, only yesterday, on appeal of the Commission's *Alianza* decision, supra, the D.C. Court of Appeals indicated that it would not "take a position on the merits of whether reinvestment of profits into community-oriented programming is a relevant public interest factor" and further maintained that its denial of *Alianza*'s petition [to immediately require Form 324 disclosure] "intimates no opinion on that question which, as the Commission concedes, petitioner is free to raise if and when renewal is granted." [5]

Therefore, it is my view that in this comparative case, where there is no chance that the requesting party is on an inquisitive fishing expedition, the Commission should have followed the Court of Appeals' suggestion in *Citizens* and allowed the challenger an attempted application of the profit reinvestment standard. Out of this case we could have learned whether application of such a criterion is even possible—let alone invaluable, valueless or somewhere in between.

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[3] "[O]ne test of superior service should certainly be whether and to what extent the incumbent has reinvested the profit on his license to the service of the viewing and listening public." *Citizens*, supra, at fn. 35.

[4] *Citizens Communications Center* v. *FCC*, U.S. App. D.C. , 449 F. 2d 1201, 22 RR 2d 2001 (D.C. Cir. 1971).

[5] *Alianza Federal De Pueblos Libres* v. *FCC*, Case No. 71–1770, slip op. at 2, 3 (D.C. Cir., October 4, 1972).

F.C.C. 72R-287

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
TUNG BROADCASTING CO., PICAYUNE, MISS.	Docket No. 19345
MISS.	File No. BPH-7285
ANDRES CALANDRIA, PICAYUNE, MISS.	Docket No. 19346
For Construction Permits	File No. BPH-7331

ORDER

(Adopted October 3, 1972; Released October 4, 1972)

BY THE REVIEW BOARD:

1. The Review Board having under consideration petition for leave to amend to update application pursuant to Section 1.65 of the Rules, filed on July 10, 1972, by Tung Broadcasting Company;

2. IT APPEARING, That no objections to acceptance of the amendments have been filed within the time allowed therefor;

3. IT IS ORDERED, That the above petition for leave to amend IS GRANTED and the amendment therein IS ACCEPTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72R-320

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of TUNG BROADCASTING CO., PICAYUNE, MISS.	Docket No. 19345 File No. BPH-7285
ANDRES CALANDRIA, PICAYUNE, MISS. For Construction Permits	Docket No. 19346 File No. BPH-7331

ORDER

(Adopted November 8, 1972; Released November 10, 1972)

BY THE REVIEW BOARD:

1. Before the Review Board for consideration are: (1) the petition to dismiss application with prejudice and grant of other appropriate relief, filed on August 23, 1972, by Tung Broadcasting Company (Tung); (2) the comments of the Broadcast Bureau, filed on September 7, 1972; and (3) the affidavit that no payment of consideration has been paid or promised in connection with the failure of Andres Calandria (Calandria) to prosecute his application, filed on September 28, 1972, by Tung.[1]

2. IT APPEARING, That, in an Initial Decision, FCC 72D-45, released July 13, 1972, Administrative Law Judge David I. Kraushaar recommended that the application of Tung be granted, and the application of Calandria be denied under a "strike" issue; that no exceptions to the grant of Tung's application have been filed; and that Calandria has filed no exceptions to the Initial Decision; and

3. IT FURTHER APPEARING, That, in light of the foregoing, the pending exceptions to the Initial Decision, filed by Tung, the Broadcast Bureau, and Ben O. Griffin, a party respondent and licensee of Stations WRPM-AM and FM, Poplarville, Mississippi, have no effect on the outcome of this proceeding; and that their only significance relates to the qualifications of Griffin, who is not an applicant in this proceeding; and

4. IT FURTHER APPEARING, That, under these circumstances, the most orderly and expeditious conduct of the Commission's business and the public interest would be best served by immediately granting the application of Tung; dismissing the application of Calandria pursuant to Section 1.276(f) of the Commission's Rules for failure to prosecute; and dismissing the pending exceptions to the Initial Decision, which would more appropriately be considered, together with the record in this proceeding, in conjunction with whatever direct action, if any, the Commission chooses to take with respect to the licensee of Stations WRPM-AM and FM.

[1] No other responsive pleadings have been filed, and the time for such filings has expired.

109-016—72——6

5. IT IS ORDERED, That the petition to dismiss application with prejudice and grant other relief, filed on August 23, 1972, by Tung Broadcasting Company, IS GRANTED; that pursuant to the provisions of Section 1.276(f) of the Commission's Rules, the application of Andres Calandria, File No. BPH–7331, IS DISMISSED with prejudice for failure to prosecute; that the application of Tung Broadcasting Company, File No. BPH–7285, IS GRANTED; that the exceptions, filed on August 14, 1972, by the Broadcast Bureau, Ben O. Griffin, and Tung Broadcasting Company, ARE DISMISSED; and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D-45

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of: TUNG BROADCASTING CO., PICAYUNE, MISS.	Docket No. 19345 File No. BPH-7285
ANDRES CALANDRIA, PICAYUNE, MISS. For Construction Permits	Docket No. 19346 File No. BPH-7331

APPEARANCES

On behalf of applicant Tung Broadcasting Company, Mr. *Robert A. Woods* (Schwartz & Woods); on behalf of applicant Andres Calandria, Mr. *Maurice R. Barnes* (Barnes & Neilson); on behalf of party-respondent Ben O. Griffin, the licensee of Stations WRPM-AM-FM, Poplarville, Mississippi, Mr. *Samuel Miller;* on behalf of the Broadcast Bureau of the Federal Communications Commission, Messrs. *Walter C. Miller* and *A. Thomas Carroccio.*

INITIAL DECISION OF HEARING EXAMINER DAVID I. KRAUSHAAR

(Issued July 10, 1972; Released July 13, 1972)

PRELIMINARY STATEMENT

1. Tung Broadcasting Company, a corporation, and Mr. Andres Calandria, an individual, have applied for construction permits to authorize the construction and operation of a new FM broadcast station in Picayune, Mississippi, on Channel 292 (106.3 mcs). In consolidating and designating these mutually exclusive applications for hearing in the instant proceeding, the Commission had to dispose of certain allegations and arguments in a petition filed by Tung to deny Calandria's application. Accordingly, for reasons set forth in paragraphs 4 and 7 thereof, the Commission, by Memorandum Opinion and Order released November 5, 1971 (FCC 71-1136) initiated the present proceeding with the following specified issues:

"1. To determine the facts and circumstances regarding ownership and control of the Calandria proposal and whether Calandria is the sole party in interest.

"2. To determine whether the Calandria proposal was filed with the principal or incidental purpose of impeding or delaying the Tung Broadcasting proposal.

"3. To determine in light of the evidence adduced in response to the foregoing issues whether Calandria possesses the requisite legal qualifications to be a licensee of the Commission.

"4. To determine whether there is a reasonable possibility that the tower height and location proposed by Calandria would constitute a menace to air navigation.

"5. To determine which of the proposals would, on a comparative basis, better serve the public interest.

"6. To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted."

2. By motion filed November 26, 1971, applicant Tung requested that Mr. Ben O. Griffin, the licensee of broadcast stations WRPM–AM–FM, Poplarville, Mississippi, be named as a party to this proceeding and that the burden of proceeding with the evidence under Issues 1 to 3, *supra*, be placed on Messrs. Calandria and Griffin. By Order released December 15, 1971 (FCC 71M–1922), the Hearing Examiner granted this motion to the extent of naming Ben O. Griffin as a party to the proceeding. Applicant Tung also filed a petition with the Commission's Review Board asking that the issues herein be enlarged in several detailed respects. On March 13, 1972, the Review Board issued a Memorandum Opinion and Order (72R–62) granting the petition to the limited extent of adding a so-called "suburban" or "ascertainment of needs" issue against Calandria. No further interlocutory pleadings of any kind are now pending before the Commission, the Review Board, or the Hearing Examiner.

3. A prehearing conference herein was held December 16, 1970. Among other matters considered on that occasion, the hearing was rescheduled from January 17, 1972 until March 1, 1972. See Order After Prehearing Conference, released December 17, 1971 (FCC 71M–1929). Between the date of the prehearing conference and the date of the hearing, applicant Tung sought successfully to obtain a discovery and inspection of certain documents against Calandria and Griffin. See Order released January 20, 1972 (FCC 72M–97). The documents were duly produced and, in addition, information called for by certain interrogatories of Tung Broadcasting Company was supplied. Hearing sessions were held on March 1, 2 and 3 at the Commission's offices, Washington, D.C. The record was closed on March 3, reopened March 13 for the inclusion of certain documentary material, and a further hearing session was held on April 26, 1972, when the record was finally closed. Proposed findings of fact and conclusions of law were filed by May 26 by all parties and reply briefs were filed by June 16 by all parties other than the Broadcast Bureau of the Commission.

FINDINGS OF FACT

The "sole party in interest" and the "strike" issues (Issues numbered 1 and 2, supra)

4. It may be noted as background that in framing the "sole party in interest" and "strike" issues, para. 1, *supra*, against Calandria, the Commission only had before it Tung's charges (in a petition to deny his application) to the effect that Calandria is closely associated with Ben O. Griffin, the licensee of broadcast stations WRPM and WRPM–FM in nearby Poplarville, Mississippi; that WRPM focuses its programming and advertising solicitation efforts towards Picayune; and that Mr. Griffin not only does not oppose Mr. Calandria, but has cooperated with the latter by agreeing to sell him land for a transmitter site, by letting Mr. Calandria use his drug store as a mailing address for his application, and by allowing his daughter to assist Calandria in conducting a community survey. There were additional allegations to the effect that Mr. Calandria utilized the services of Mr. Griffin's consulting radio engineer and that Mr. Calandria had begun his broad-

casting career as a part-time announcer at Mr. Griffin's radio station. After reviewing such allegations and Mr. Calandria's responses thereto, the Commission, in its Memorandum Opinion and Order designating the applications for hearing, concluded that " . . . Calandria has not resolved the questions raised by the pleadings . . . ". (FCC 71–1136, para. 5–7).[1] See Bureau's Proposed Findings, para. 3.

5. The record shows that Tung has been in business in Picayune, Mississippi ever since the fall of 1960, operating Station WRJW, a 5 kw AM daytime only station allocated to that community. Picayune's 1960 U.S. Census population was 7,834. By 1970 the population had grown to 10,467. When Tung acquired Station WRJW there were no broadcast stations assigned to nearby Poplarville, Mississippi. (1960 U.S. Census population 2,136; 1970 U.S. Census population 2,312). The latter situation changed, however, beginning with May 23, 1962, when Mr. Ben O. Griffin had been granted a 1 kw, daytime only facility for Poplarville, Mississippi to operate on the frequency 1530 kHz. And, subsequently, the record discloses, Mr. Griffin was authorized to increase the power of his station (WRPM–AM) from 1 kw to 10 kw (BP–16703 granted December 19, 1966).

6. The evidence shows that in December 1963 Mr. Griffin applied to the Commission for authority to establish a new Class C FM station to operate on Channel 300 which, though assigned to Bogalusa, Louisiana, could be utilized in Poplarville, Mississippi due to the proximity of Poplarville to Bogalusa. Bogalusa, Louisiana's population, it may be noted, fell from 21,423 according to the 1960 U.S. Census to 18,412 in 1970, a drop of some 14%. Mr. Griffin's FM broadcast station (WRPM–FM), it appears, began broadcasting in February of 1966. It is notable also that Griffin was authorized by the Commission to move his transmitter location (AM and FM) slightly closer to Picayune (File No. MP–19091 granted October 19, 1971; File No. BPH–7042 granted February 19, 1971); that Picayune and Poplarville, Mississippi are about 21 miles apart, both communities being located in the same county, Pearl River County; that Picayune is located approximately 30 miles from Bogalusa, Louisiana and some 45 miles from New Orleans; that there is but one newspaper published in Picayune, the *Picayune Item*, which is published twice weekly; and that Poplarville, Mississippi has a weekly newspaper.

7. The evidence also discloses that Mr. Griffin has been a Picayune resident since 1947; that, a registered pharmacist, he had purchased what is now known as the City Drug Store in Picayune in 1948; that he has owned and operated the drug store ever since 1948, without interruption; and that he has substantial real estate holdings in the Picayune area. On balance, the background facts lead to an inference that it is by no means accidental that Mr. Griffin's broadcast stations, both AM and FM, program actively for, and solicit advertising revenues in, Picayune, Mississippi. It is also quite clear that Griffin, with the only radio facilities in Poplarville, and Tung with the only radio

[1] There is no indication herein that any independent investigation of Tung's charges had been conducted by the Commission's staff. It is clear, as a consequence, that the Commission had to depend exclusively in formulating the issues upon the charges and the responses thereto set out in pleadings filed by the parties-in-interest. It was therefore of obvious importance to the Commission that it be fully and accurately informed by the parties as to all significant aspects of the controversies between them.

station in Picayune, are active competitors for advertising dollars in the Picayune, Mississippi environs.

8. It appears that during the year 1966 Tung had retained a consulting radio engineer in order to ascertain whether an FM channel was available for assignment in Picayune, Mississippi, inasmuch as this seemed to be the only feasible way Tung could provide a full-time broadcast service. When this endeavor proved fruitless, Tung's Secretary-Director-stockholder and General Manager of Station WRJW, approached Mr. Griffin with the idea of purchasing the latter's recently established FM facility. Mr. Griffin, however, was not interested.

9. On April 23, 1969, Tung, it seems, filed comments in a rule-making proceeding before the Commission requesting the assignment of FM Channel 292A to Picayune, Mississippi (RM–1422, Docket No. 18766). Moreover, the evidence indicates that sometime between April 23 and August 19, 1969, Mr. Jones II, Tung's principal, had informed Mr. Griffin explicitly of Tung's then-pending request to have the FM Channel assigned to Picayune. Thus, there can be little room for doubting that Mr. Griffin was made aware, at an early date, of Tung's interest in having a Picayune FM facility; and, of course, Mr. Griffin could not himself apply for such a facility because of the prohibitive overlap that would be created thereby with his Poplarville FM operation.

10. With the foregoing background data in mind, we now turn to the involvement of Mr. Andres Calandria, Tung's competitor in the present proceeding, under the issues. Mr. Calandria is nearly 30 years of age and is a native and resident of New Orleans, Louisiana. According to the evidence, he first entered the scene, as far as the instant case is concerned, in the year 1963, age 20, when he attended Pearl River Junior College in Poplarville, Mississippi. For during November of that year he had obtained his first job as a part-time announcer at Mr. Ben O. Griffin's standard broadcast station. Shortly thereafter he became a full-time employee of Mr. Griffin. Since the latter considered Mr. Calandria to be a gifted announcer, he gave Calandria the task of producing a large number of Station WRPM's spot announcements and station identifications.

11. Mr. Calandria worked for Mr. Griffin from November 1963 to June 1965. During that time their relationship became quite friendly and the friendliness continued after Mr. Calandria left during June of 1965 in order to go to work for Station WDSU, New Orleans. Indeed, even while working for Station WDSU, Mr. Calandria would return to Poplarville on weekends to do special events and productions for Mr. Griffin free of charge. And during the following year, 1966, when Mr. Griffin was installing his FM broadcast station, Mr. Calandria made station breaks for Mr. Griffin, again free of charge. Further, after he moved back to New Orleans, Mr. Calandria would visit the Griffin family in Picayune at one or two month intervals.

12. From February 21, 1968 until February 18, 1972, Mr. Calandria served as a radio and television specialist in the U.S. Air Force. During the period of his military service he and Mr. Griffin continued to keep in touch. Between February 1968 and February 1969, while he was stationed at Montgomery, Alabama, Mr. Calandria visited the Griffins occasionally. Calandria was overseas in Korea between Feb-

ruary 1969 and February 1970. Even while he was overseas, he continued making station sign-offs and station identifications for Griffin free of charge. While he was overseas Calandria made two telephone calls to Ben Griffin via short wave and phone patch, apparently. The first such call was around Christmas time 1969 which Mr. Calandria says was to wish Mr. Griffin and his family a Merry Christmas. A second call was made shortly afterward for the purpose of informing Mr. Griffin that he (Calandria) would be coming home soon.

13. Mr. Calandria returned from Korea in the beginning of February, 1970, and immediately went home to New Orleans on furlough, where he remained until February 19th. On February 22 or 23 he reported to his new military duty assignment at Lockbourne AF Base, Ohio. Early in April of 1970 he went to Montgomery, Alabama, where he was married on April 18th. He subsequently returned to Lockbourne AF Base where he remained until he conducted a survey in Picayune during October of 1970. There is a seeming conflict in the evidence as to just when it was during the period February–May 1970 that Mr. Calandria first learned of the availability of an FM assignment in Picayune. According to Mr. Calandria, he did not learn of the availability of the FM channel until April 28, 1970; whereas, according to Mr. Griffin and the testimony of Mr. Robinson, Calandria's consulting radio engineer, this occurred some time in February 1970 when Calandria had been on furlough from the Air Force, Mr. Griffin having mentioned in a telephone call to Calandria in Montgomery, Alabama that an FM frequency was being assigned to Picayune.

14. In the context of the facts summarized to this point, particularly regarding the nature of the relationship of friendship that apparently had prevailed for some time between Mr. Calandria and Mr. Griffin and the Griffin family, it is noted that Tung filed its FM application (File No. BPH–7285), on October 12, 1970; whereas Calandria filed his FM application approximately two months later (File No. BPH–7331), on December 9, 1970; that, at the time he filed his application, Calandria knew it was incomplete; and that Calandria went ahead, nonetheless, and filed his incomplete application in the knowledge that he could, under the Commission's rules, amend it as of right later on, up until the applications were designated for hearing. As a matter of fact, the evidence has disclosed that Calandria did amend his application fairly extensively, as a matter of right pursuant to the Commission's rules, before designation of the applications for hearing. Indeed, his own proposed findings of fact, paragraph 1, in effect concede that separate amendments were filed that, among others, altered the applicant's financial showing significantly and changed the staffing proposals, added a showing on community surveys and contacts, and that corrected or changed geographical coordinates locating his proposed transmitter site. The requisite publication concerning Tung's application was accomplished in October 22, 29, and November 5, 1970, in the *Picayune Item*, whereas Calandria's publication in the same paper occurred on December 30, 1970, and on January 6 and 13, 1971. On balance, it seems fair to state that Mr. Calandria knowingly took full advantage of Commission practice by filing an application originally that he believed was complete enough (and evidently in fact it was) to be accepted by the Commission's processing line, yet *not* complete for

other purposes, in order, simply, to insure its being considered with the prior-filed, mutually exclusive application of Tung. There are a host of other circumstances that must be considered, however, in order to evaluate fully the *bona fides* of the Calandria filing and of his motivations, as well as those of Mr. Griffin.

15. The evidence disclosed that Mr. Odes Robinson, a consulting radio engineer, has represented both Mr. Calandria and Mr. Griffin, and that he has continued to do so even after the filing of Mr. Calandria's Picayune, Mississippi application with the Commission.[2] Indeed, the record disclosed that Mr. Robinson was performing engineering services for Mr. Griffin as recently as November 1971. It was also shown that Mr. Robinson had been Mr. Griffin's consulting radio engineer for several years and that he had performed most, if not all, consulting radio engineering services for Mr. Griffin's AM and FM broadcast stations. There is also evidence concerning a telephone conversation between Mr. Robinson and Mr. Griffin that appears to have occurred either in the month of January or in the month of February 1970, wherein Robinson is quoted as having told Griffin that the latter could expect some broadcast competition in view of the Commission's allocation of an FM channel to Picayune. It likewise appears from Robinson's testimony that he had been trying "for a long time" to convince Mr. Griffin to try to move his FM station from Poplarville to Picayune, although this posed a problem because Mr. Griffin's FM channel was assigned to Bogalusa, Louisiana (T.359,360,380).

16. Although it is beyond dispute that the evidence shows that Mr. Robinson while serving Mr. Griffin as consultant also was Mr. Calandria's engineer and had prepared the engineering portions of the latter's application, there are conflicting evidential details regarding the manner in which Mr. Robinson had been retained by Mr. Calandria. It is considered immaterial, however, whether Mr. Robinson in such regard may have "testified falsely or evasively as to how he was employed" (Bureau's Proposed Findings, para. 17), and that his testimony leaves much to be desired because of the conflicts therein (Bureau's Proposed Findings, para. 17–20, incl.).[3] For the evidence demonstrates, nonetheless, that prior to April 30, 1970, when Mr. Calandria had made his first long distance telephone call to Mr. Robinson regarding the possibility of retaining the latter as his consultant, Calandria had met Robinson only once, some time during the year 1964 when Mr. Robinson was conducting a proof of performance at Mr. Griffin's radio station. Consequently it was perfectly clear, to the Examiner at least, that Mr. Calandria had relied more on the fact that Mr. Odes Robinson had been Mr. Griffin's consultant than on Robinson's "exten-

[2] There is meant to be no suggestion that it is necessarily unethical, or wrong, for the same consulting radio engineer to represent competing broadcasters or applicants in the same market, especially where no actual conflicts of interest affecting his services can be shown. In the setting out of which this proceeding arose it is at least an arguable inference, from the employment by Calandria and Griffin of the same consultant, that the latter did not look upon their interests as either actually or potentially conflicting, or even as competitive, for that matter. For it is fair to presume that a professional like Mr. Odes Robinson would not knowingly engage in a course of conduct that might subject himself to criticism.

[3] Apart from the fact that Robinson's testimony cannot by itself, bind Messrs. Griffin and Calandria, it is far from clear that a faulty memory was not responsible for the internal conflicts therein. The situation does not, in the Examiner's opinion, require, or call for, a characterization of Mr. Robinson's testimony that could adversely affect his professional standing or repute.

sive background and knowledge of broadcasting" or on the "air" Mr. Robinson had about him (*Cf.* Bureau's Proposed Findings, para. 21). The testimony indicates, moreover, that although Mr. Calandria had not seen, or conversed with, Mr. Robinson between 1964 and 1970, Calandria had called Mr. Griffin on April 30, or May 1, 1970, ostensibly to ask for Robinson's telephone number; that the call had been placed to a private, unlisted number Mr. Griffin had which Calandria testified he knew from the days when he had been employed by Mr. Griffin; that this telephone call had *allegedly* been of very brief duration with nothing discussed other than the quest for Robinson's telephone number; that Calandria claimed he had not sought Griffin's evaluation of Robinson's work and Griffin had provided no indication whether he was pleased or displeased with Mr. Robinson's performance. However, whereas Messrs. Calandria and Griffin maintained that the duration of this particular telephone call had been brief, there is evidence that a telephone call had been made on May 1, 1970 from Calandria in Montgomery, Alabama to Griffin in Picayune, Mississippi costing $6.60, hardly a brief call. There is, in other words, some reason at least to suspect that Mr. Calandria's assertion (Calandria Ex. 4) that he had never discussed the hiring of Mr. Robinson to do his (Calandria's) engineering work with Mr. Griffin was not completely accurate. To sum up, while the Examiner observed nothing about the demeanor of Messrs. Griffin and Calandria during the time they testified to lead him to be suspicious of the veracity of their testimony, objective circumstantial evidence of record appears, ineluctably, to create doubts regarding the complete trustworthiness and accuracy, particularly of Calandria's evidence herein.[4]

17. There were additional factors that appear circumstantially to confirm the existence of a Calandria-Griffin-Robinson motivation, at least in part, to block the Tung FM application from receiving early favorable action by the Commission. Thus, the evidence was unrefuted that Calandria obtained his proposed transmitter site from his friend Mr. Griffin on the admitted suggestion of Mr. Robinson, who testified, indeed, that he had told Calandria that Griffin owned a lot of land in the Picayune environs and that he, Robinson, 'had known of a spot already' (T.349). (The only other specific information Robinson provided Calandria as to a suitable transmitter site was that it had to be located within 8 miles of Picayune.) Although Calandria testified that he had telephoned Mr. Griffin on May 19, 1970 to inquire whether the latter had suitable land for a transmitter site but that Mr. Griffin had advanced no suggestions about what land to buy or where he ought to locate his proposed FM station (T.57,58,87,103,104), Griffin, for his part, by stating that Calandria had no choice as to where to locate his transmitter and that he sold Calandria the only parcel of property he was willing to part with, seemed to be admitting in effect that he had selected Calandria's transmitter site for him (T.438,439,-

[4] While testifying Mr. Calandria impressed the Examiner as a bright, serious young man who forthrightly and candidly desired to grasp the opportunity presented in this proceeding to build and operate a new FM facility in Picayune, Mississippi. Unfortunately for Calandria, however, objective analysis of the evidence, including the affidavits and pleadings as well as the substantive testimony, tends to negate and render illusory, Calandria's favorable impression as a witness. For the sum-total of all the inconsistencies and omissions leaves one with the seemingly unassailable conclusion that Calandria had been careless with the facts and indifferent to the need for being accurate in all his dealings with the Commission.

462,472,473). It is true that Mr. Griffin had also represented that he was not "too anxious" to sell even the one parcel he had in mind to Calandria (T.438,439), but that he had done so because the parcel in question was located across the street from the rest of his real estate and that he could therefore let Mr. Calandria utilize it without its interfering with his other property (T.439). However, the extreme informality with which the sale of this supposedly important parcel of real estate to Calandria was handled, in the light of the Calandria-Griffin friendship and the existence of an obvious motive of Griffin to encourage and help a friend with his application in order to delay Tung, seems to confirm a version of the transaction that implies the existence of a kind of charade conducted for the purpose of playing down the appearance of Mr. Griffin's role in the transaction. The evidence shows that Mr. Griffin gave Calandria no legal description of this parcel of real estate and that he admitted he had never even checked the accuracy of the description set out in a so-called binder agreement bearing the date of November 1, 1971. Moreover, he admitted that normally he would have made certain of the accuracy of the description when selling his land (T.509,510).[5] In fact, he even conceded (T.511) that he had never before sold a piece of property in the way he had sold this parcel to Calandria, *i.e.*, without checking the accuracy of the description. Furthermore, while the discussions concerning the use of the land by Calandria, between Calandria and Griffin, seem to have all occurred during May and June of 1970, the so-called "binder" was apparently not executed until November 1, 1971, after applicant Tung had made charges against Calandria for allegedly filing a strike application (T.312–320). It also appears that while the "binder" is dated November 1, 1971, a so-called "good faith" check for $1 that Calandria sent to Griffin bears the date of October 8, 1971.

18. A further suspicious circumstance is the fact that Mr. Griffin, without compensation of any kind, had permitted Calandria to keep his FM application on public display in his Picayune drug store.[6] Moreover, the evidence indicates that, during his ascertainment-of-needs surveys in October 1970 and May 1971, Calandria and his proposed Assistant General Manager, Mr. Ray Hebert, had utilized Mr. Griffin's drug store as a meeting or stopping-off place. And Griffin seems to have forwarded mail to Calandria from his drug store (T. 492,493). In addition, Mr. Griffin had obtained a topographic map and site photographs for Mr. Calandria at the latter's request.

19. Although site photographs are not required in support of an FM application, a circumstance as to which Griffin and Calandria were both seemingly unaware at the time, Calandria had asked Griffin to arrange for and secure site photographs since he could not make the arrangements to obtain them himself. According to Calandria's

[5] The evidence indicates that Mr. Calandria, the prospective buyer, prepared the so-called "binder agreement" himself and that he had obtained the description of the site set forth therein from his father-in-law who is a professional real estate appraiser. Seemingly, the father-in-law drafted the description from an aerial survey map and a topographical map, though just how this was done was nowhere elucidated in the record (T.312,313).

[6] According to Calandria, he had hand-carried his application to Griffin's drug store and without his being aware of it at the time Mr. Odes Robinson had taken it upon himself originally to use Griffin's drug store as a mailing address when he filed the FAA form. Later he questioned Messrs. Robinson and Griffin about the use to which Mr. Griffin's drug store was being put and Robinson indicated that he "saw no harm in it", whereas Griffin advised that it was all right so long as Mr. Robinson saw nothing wrong.

own testimony, he telephoned Griffin long distance and asked Griffin "let's get the aerial shots and be on our way with this thing" (T.83). As a result, Mr. Griffin proceeded to arrange for the lease of an airplane and for the hiring of a pilot to do the job and his (Griffin's) son went along and took the photographs which were subsequently developed by Griffin's drug store photo service. Griffin mailed these pictures then directly to Mr. Odes Robinson without any letter of transmittal (T. 476, 477). While the testimony of record of Messrs. Calandria and Griffin clearly indicates what transpired in regard to the site photographs, there is seemingly inconsistent testimony by Calandria in response to questions by the Hearing Examiner, to the effect that Mr. Griffin had *never* volunteered to help Calandria and that any information he needed for his application came from Mr. Robinson and himself (T. 250). It is not at all clear, however, from this apparent inconsistency alone that Calandria had intended to mislead anyone; for his testimony elsewhere, wherein the site photographs matter was dealt with explicitly (T.82–84), contains clear-cut admissions against interest on that matter.

20. The evidence indicates that Calandria reimbursed Griffin in cash for taking, developing, and mailing the site photographs and the procurement and mailing of the topographic map, although Calandria was unable to remember the amount involved other than that it was more than $25.00. He was likewise unable to break down the costs as between the airplane, the pilot's fee, the cost of taking and developing the pictures, the cost of securing a topographic map, and the cost of mailing such items to Mr. Robinson. While such failures of memory do tend to cast doubt on the veracity of his testimony to the effect that Mr. Griffin was in fact reimbursed, the absence of any positive proof in contradiction thereof induces the Examiner to accept this testimony at face value. In this connection, the Examiner also takes into account seeming contradictions between Mr. Griffin's testimony and Calandria's as to when the reimbursement occurred, whether it was in October of 1970 or during the Christmas period of that year. Other than the fact that there were inconsistencies and contradictions in the testimony that have not been resolved or explained satisfactorily and completely, the Examiner finds no firm basis for concluding that the witnesses involved were purposefully untruthful. They may simply have been disadvantaged by faulty memories. In the Examiner's opinion, in short, the evidence simply does not persuade that where memories may have failed they were purposefully bad.

21. The evidence indicates that Mr. Griffin may have assisted Calandria, at least to a degree, in regard to Calandria's ascertainment of programming needs surveys (T.309). For Griffin admitted that Calandria had called him "on several occasions" for assistance with his surveys, asking questions about how to go about it, and Griffin had told him what he knew. At one point, it seems, Griffin suggested that Calandria might utilize a copy of the Picayune, Mississippi telephone directory for the names of persons to contact. On another occasion Calandria asked the name of a city board member, which Griffin provided. Griffin also suggested that Calandria obtain a copy of the Commission's *Primer* concerning the ascertainment of needs problems,

but was unable to recall whether he had made a copy of this document available to Calandria.

22. While the evidence discloses that Mr. Calandria swore in his written direct testimony (Calandria Ex. 3, p. 2) that he had never consulted with Mr. Griffin on any matters regarding any proposed station and that Griffin's sole source of information concerning his proposed FM station is "just what he may have read in my public file . . .", except for the negotiations for the land Calandria sought to purchase from him, he admitted when cross-examined that on several occasions he had called Griffin for help on his ascertainment-of-needs survey. Although the Examiner cannot infer from this matter alone that Calandria intended in his affidavit to mislead anyone, this does evince a certain carelessness on Calandria's part with regard to the need for truth and accuracy, which cannot be condoned. There were similar instances of carelessness in regard to Calandria's testimony concerning his interview with Mr. Griffin's son-in-law and what transpired during an interview with Carolyn Scott, Mr. Griffin's daughter, especially as to dates (Bureau's Proposed Findings, para. 39 and footnotes, adopted and incorporated herein by reference). It also appears that Mr. Griffin did assist Mr. Calandria to an extent in preparation for the hearing by obtaining an affidavit from his daughter and that Mr. Calandria's mother, who has agreed to put up the capital (up to $100,000) to finance her son, had telephoned Mr. Griffin ostensibly in order to check on the economic feasibility of her son's undertaking. And there is at least an indication in the evidence that Mr. Griffin had informed Calandria as to a step that was being considered by Tung (Bureau's Proposed Findings, para. 41, p. 26).

23. In addition to the circumstances detailed above, it may be noted that between May 1, 1970, and December 6, 1971, Calandria seems to have made at least thirteen long distance telephone calls to Griffin, most of which appear to have involved, directly or indirectly, the preparation of Calandria's application, and that during the same period some nineteen telephone calls were made by Calandria to Robinson, all of which appear to have involved the preparation of Calandria's application. Also, it seems that Calandria made additional long distance telephone calls that were not listed in the exhibit he submitted which was designed expressly to list *all* such calls in connection with his application. And it also appears that Mr. Griffin had called Calandria long distance on three occasions, according to Calandria, and on at least five occasions according to Griffin; that Calandria testified that the discussions he had had with Griffin during these calls did not relate to his proposed FM station, although concededly one such call did involve Griffin's agreement to sell Calandria land for his FM transmitter site, whereas Mr. Griffin, for his part, testified that business had been discussed during these calls; and that while Calandria appeared to be able to remember the substance and details of phone calls he had made to Griffin, he had difficulty remembering the substance and details of calls by Griffin to him (T. 121).

24. Viewed in isolation such facts, and the apparent testimonial inconsistencies in connection therewith, may be characterized as *de minimis*. In conjunction, however, with the context in which this proceeding arose and with the other factors detailed above, such matters

together weave a circumstantial web of adverse inference and suspicion as to the motives and activities of persons whose broadcast qualifications are in question under the issues. In this light, particularly, Mr. Calandria's testimony at one point (Calandria Ex. 3, p. 2) that he never consulted Griffin "on any matters regarding my proposed station" and "Whatever Mr. Griffin knows about the proposed station is just what he may have read in my public file," and that "The only real discussion about the station [*i.e.*, with Griffin] revolved around two acres I intend to buy from him for $2,000.00," is evidence of a careless disregard by Calandria of the need for complete candor on his part at all times. The same may be said with respect to Griffin's February 5, 1971 affidavit which purported to describe his relationship with Calandria and was designed as a response to the strike allegations in Tung's January 20, 1971 Petition to Deny (Bureau's Proposed Findings, para. 48). The Commission in carrying out its important public functions cannot afford to condone such less-than-fully candid and accurate statements in pleadings submitted for its adjudication. In short, Mr. Griffin's omission in that affidavit to mention his consent to let Calandria use his drug store as a public repository of Calandria's application, his role in obtaining a topographical map and site photos for Calandria, his consultation with Calandria's mother on the economic feasibility matter, and so on, may have been conceived as a shrewd policy in dealing with the charges of a competitor, but it also disclosed a patent lack of understanding as to the need for full candor by a licensee in his dealings with a public regulatory body. (*Cf.* T. 302–317, especially.)

25. There are additional matters to be considered which are set forth at length in the Bureau's Proposed Findings, para. 49–52. While one may aptly declare that there is no need to belabor the situation further or, to quote a modern aphorism, "to beat a dead horse", the Examiner does believe that the additional contradictions and apparent evasions portrayed therein are a further strand in the web of suspicion and circumstantial evidence against Mr. Calandria that the present record weaves. These paragraphs of the Bureau's Proposed Findings are therefore adopted and deemed to have been incorporated herein by reference. On the question of economic impact that was raised during the hearing, one cannot fail to take note of the fact that Mr. Calandria had made no convincing effort or survey prior to filing his application to ascertain whether Picayune, Mississippi could support an independently programmed and operated FM station, or to determine the extent of revenues he might anticipate drawing from the community, or even to determine the extent of FM set penetration for either Pearl River County or Picayune. On the same point, it is of some significance, perhaps, that Mr. Griffin testified as to his impression that his stations had lost money every year, although his testimony also indicates that for 1969, at least, there may have been a profit (T. 414, 415; 502, 503, 518); and that he had taken no money out of his stations personally since "We have had a lot of technical problems" with his AM station which he had been trying to overcome (T. 415, 416). He was "positive", moreover, that the "right kind of competition" by another FM station in the market would help his own business as well as the additional FM station's (T. 519). If Mr. Griffin's stations had indeed suffered hard

times one is brought to wonder all the more why Mr. Calandria took the economic questions so much for granted.

26. From Calandria's viewpoint it is appropriate, however, to point up certain favorable factors, such as the fact that the unrefuted evidence shows Calandria as having actually paid Mr. Robinson, his consulting radio engineer, a total of $639.71 for services rendered ($300.00 on September 15, 1970; $335.45 on November 12, 1970; and $4.26 on October 6, 1971). It appeared on the whole likely that Calandria, if afforded the opportunity, would in fact construct the FM facility he is proposing herein. It may also be observed that it must have been obvious to Tung, in advancing its charges against Calandria, that, with its media interests and those of its principals, Tung would have had difficulty in prevailing over Calandria in a straight comparative-type hearing proceeding. If the objective of "diversification" policy is merely to encourage a proliferation in numbers of broadcast "voices", without regard to the question whether competition among them may or may not be wholly at 'arm's length', a grant of Tung's application, unlike a grant of Calandria's, would yield no new "voice" to Picayune. That Tung's principal (Mr. Jones II) is well aware of the consequences, the Examiner believes, is implicit in testimony admitting, in effect, that he is fearful of having to compete with Calandria and that he would attempt to acquire by purchase later on an FM facility authorized and built by Mr. Calandria. Also, he has testified to his belief, unsupported by any solid economic documentation, that the Picayune, Mississippi market cannot support additional independently operated broadcast competition (T. 568–574).[7]

27. With respect to Mr. Griffin's attitude on the matter of the competitive situation in the Picayune, Mississippi market, it is true that he pointed out during his testimony that he did not believe competition with another FM broadcast station in that market would hurt him; that all the troubles he had been having with his own broadcast operations were attributable to "physical or technical" causes; that he believed that "apparently we have a very good listening audience" for FM because people are beginning to buy FM receivers and the area was getting a good degree of set penetration and he (Griffin) had confidence in developing it; and that, at least in his view, another local FM station in the market would make more people aware of his own FM station, and he believed he would benefit from such competition whether it came from Calandria or from Tung. Indeed, he insisted categorically that whether the owner of the second local FM facility happened to be Mr. Calandria or Tung Broadcasting made no difference whatever to him (T. 440, 441). The fact remains, however, that due to his friendly relations with Calandria, the proposed location of the broadcast facilities concerned in a relatively small community, Griffin's cooperation with and assistance to Calandria, and the several other suspicious factors cited hereinabove, potential broadcast com-

[7] Calandria was questioned at length regarding the bases for the estimate he had given in his application as to the revenues to be anticipated during the first year of operation of his proposed FM station. Though predicated somewhat vaguely upon Calandria's past experience in the Picayune market, these estimates appear to have a rational basis. Among others, he also pointed out the cooperative attitude he had experienced among local merchants and their willingness to advertise on competing radio stations (T. 273–278). Calandria, however, appears not to have investigated advertising demand until *after* his application was filed (T. 278, 279).

petition as between Messrs. Griffin and Calandria remains suspect as not likely to be *bona fide* or at "arm's length". While it may be so, as Mr. Griffin's counsel urges (Griffin's Reply, para. 2), that "there is not one iota (*sic*) of evidence that Griffin had any apprehension as to the ill effects of the advent of a new FM station, or whether he would welcome competition from Calandria . . .", it yet flies in the face of reality to expect a business man in Griffin's position to confess to a state of mind that would be manifestly adverse to his business interests, and the circumstantial evidence herein at least points in the direction of a contrary view concerning Mr. Griffin's state of mind.

Issue 4—Air Hazard Issue

28. Under designated Issue 4, *supra*, the Commission requires a determination to be made as to whether the height and location of Calandria's proposed tower would create an air navigation hazard. To meet this question, Calandria submitted an exhibit showing that the Federal Aviation Administration had determined that the proposed tower would not constitute a hazard to air navigation.

Ascertainment of Needs Issue

29. In order to meet his ascertainment-of-needs obligation, Calandria conducted three surveys. Along with his proposed Assistant General Manager-Program Director, Ray Hebert, he ran the first survey between October 5 and 15, 1970. Hebert, with some help from Calandria, conducted a supplemental survey in May, 1971. Calandria conducted a third survey between March 22 and 31, 1972, in response to the Review Board's enlargement order of March 13, 1972, FCC 72R–62.

30. Before he took his first survey, Calandria reviewed the proposed *Primer*. He then obtained demographic data and developed a cross section of community leaders to be interviewed. After reviewing the *Primer* he also developed a questionnaire. Then, in October 1970, Calandria took a month's leave from the Air Force, went to Picayune, met and briefed Hebert, and conducted his survey.

31. They interviewed fifty-one individuals between October 5 and 15, 1970. Hebert conducted eleven personal interviews, while Calandria conducted the other forty, thirty-three in person and seven by telephone. They interviewed both community leaders and members of the general public. Subsequently, Calandria analyzed those interviews and identified nine problem areas, including such problems as the lack of adequate medical services and facilities, the depressed state of the local economy, and racial discrimination.

32. To meet the problems cited above, Calandria proposes to broadcast, *inter alia*, the following programs: (1) "You and Welfare" which will be a once a week, one hour program commencing at 1 p.m. Sunday; (2) "Town Meeting"—55 minutes duration, 5 days a week (Monday–Friday) beginning at 8:05 p.m.; (3) "The Negro Hour"—a one hour daily program beginning at 6 p.m.; (4) "Job Opportunities"—a one hour, once a week program broadcast at 1:05 p.m. Saturday; and (5) "Education in Action"—a one hour, once a week program broadcast at 9 p.m., Wednesday.

33. During May 1971, Hebert conducted a supplemental survey in Picayune. He interviewed 17 community leaders and members of the general public. These were in-person interviews. At the same time, Calandria conducted telephone interviews with the Deputy Director of NASA's Mississippi test facility and an aide of Senator John C. Stennis. After evaluating these supplemental contacts, Calandria determined that the community problems previously uncovered by his October 1970 survey were still valid.

34. Subsequent to the Review Board's enlargement of the issues, Calandria conducted a survey of people beyond his community of license. He interviewed 98 people in some eighteen small nearby communities.[8] After evaluating those interviews, Calandria concluded that the outlying areas were beset by most of the same problems as Picayune itself. However, Calandria did determine that because the area consists of small, scattered, unincorporated communities, there is a lack of unity of focus in dealing with such local problems as poor sewerage, and lack of medical services. Calandria proposes to meet this newly ascertained problem; *i.e.*, the lack of unity, through his proposed program "Town Meeting" described *supra*.

Comparative Factors—(Issue 5)

35. Only the salient facts need be mentioned with regard to the standard comparative criteria. Tung, as noted, is the licensee of standard broadcast station WRJW, Picayune, Mississippi (1320 kHz, 5 kw, day). It is a Mississippi corporation with 750 authorized common voting shares, of which 415 shares are issued and outstanding to:

James O. Jones II, secretary and director, 55 shares, 13 percent; Hugh O. Jones, president, director, 330 shares, 79 percent; Mrs. Sarah S. Jones, vice president, five shares, 2 percent; and Mrs. Mabel J. Turnbough, 25 shares, 6 percent.

In addition, Mr. L. A. Koenenn, Jr. is a director but not a stockholder of Tung.

36. Mr. James O. Jones II, Tung's Director and 13% owner (*supra*) is a local resident of Picayune (since October 1960), and he has been the full-time general manager of Station WRJW, *supra*, from October 1960 to the present. He will perform the duties of full-time general manager of Tung's proposed FM facility, and is committed to devote as much time to the day-to-day FM operation as he will devote to the companion AM station of Tung. Mr. Jones II is shown to be a member, officer or director, and past officer of a variety of Picayune civic organizations. Tung Proposed Findings, para. 5. He has also accumulated varied experience in both broadcasting and in general business enterprise.

37. Mr. Hugh O. Jones, Tung's President, Director and controlling (79 percent) stockholder is Mr. Jones II's father and the father of Mrs. Turnbough, *supra*. Although he appears to have a fairly diverse

[8] Interviews were conducted in such communities as: (1) Nicholson, a small unincorporated community of about 600 people; (2) Ozona—unincorporated with about 300 people; (3) Richardson—unincorporated with about 300 people; (4) Carriere—unincorporated with about 700 people; and (5) Industrial—unincorporated with about 600 people.

broadcast background and experience and is a principal of the licensee of Station WPMP–AM and WPMP–FM, Pascagoula, Mississippi (Tung Proposed Findings, para. 4(b)), he is now 80 years of age and in ill health and it is not proposed that he will perform any active role in the daily operation of Tung's proposed FM station. Neither he nor any of Tung's stockholders other than Mr. Jones II is a resident of the Picayune, Mississippi area; nor will they be integrated on a day-to-day basis in the operation of Tung's proposed FM station.

38. In addition to the facilities mentioned above, the Jones family have the broadcast and CATV interests detailed in Tung's Proposed Findings, para. 6, which is deemed to be adopted and incorporated herein by reference.[9]

39. Mr. Calandria, Tung's competitor, as indicated before, is an individual applicant. He is a New Orleans resident, but he plans to spend weekends in the Picayune area, staying at his parents' home at Kiln, Mississippi, less than a 30-minute drive from Picayune. He would move to Picayune, if he receives a grant of his application herein, to devote full time to the operation and management of his proposed FM station as General Manager, Engineer and Salesman-Announcer. Mr. Raymond Hebert, a resident of Westwego, Louisiana at present, is to be Assistant General Manager and Program Director of Calandria's proposed FM station. Calandria is not now a member of any Picayune area civic organizations, although he has made inquiries and plans to affiliate with such organizations if his application is granted.

40. Mr. Calandria's education, background and experience are summarized fully and fairly in the proposed findings which are hereby adopted and incorporated herein by reference. Calandria's Proposed Findings, para. 15–25; Tung's Proposed Findings, para. 7–9.

Conclusions

41. The Hearing Examiner was impressed with applicant Calandria's forthright deportment and clean-cut appearance while testifying.[10] He cannot, in good conscience, conclude, without having serious reservations, that Mr. Calandria was anything like the rogue he has been seemingly painted to be, although a study of the "cold" record does leave much to be desired in evaluating Mr. Calandria's candor. Nor, predicated on the present record, can the Examiner conclude, any more than the Commission was able to conclude in regard to the principals in the leading case of *Ashboro Broadcasting Company*, 20 FCC 2d 1, 5, that Mr. Griffin has acted so dishonestly that

[9] Predicated on Stipulation #2 submitted with a motion by Tung to Reopen the Record of March 13, 1972 (motion granted by Order released March 23, 1972, FCC 72M–383). It appears that there are several broadcast and CATV facilities in the areas served by the Jones family's communications interests. See Tung's Proposed Findings, para. 6.

[10] During the hearing counsel for the Commission's Broadcast Bureau volunteered that the "Bureau's position is that this [presumably the strike application matter] is a very sensitive issue. It is very important to observe the demeanor and check the veracity and truth of each of these witnesses . . ." (T. 475, 476). The Examiner concurs. What we have in this proceeding is a conflict between the "demeanor" or deportment of witnesses while testifying and the substance of the evidence they provided. The Examiner is unable to find and conclude that any of the witnesses was a deliberate liar. On the contrary, at best the conflicts in the evidence could have been caused by memory failures, at worst by the failure of Messrs. Griffin and Calandria in particular to appreciate the need for being accurate and accordingly telling the full story in the pleadings and their affidavits, as well as during cross-examination.

his qualifications to continue as a licensee are necessarily imperilled. Yet, it must be conceded that none but the most naive could expect the kinds of facts that must be established in order to constitute the administrative offense of filing a "strike" application, as the term is defined in current Commission policy or parlance, to be established by direct, as distinguished from circumstantial, proof. And in this case there was abundant circumstantial, yet persuasive, evidence inexorably resulting in a conclusion that the Calandria application was filed, in part, or "incidentally", for the purpose of obstructing or delaying a grant of the Tung application. Again, in reaching such conclusion the Examiner takes account of the fact that Calandria appeared to him to be a bright young man, a veteran of the armed services who under other circumstances, perhaps, ought to be encouraged by being given opportunities to realize his career ambition to be a licensed broadcaster.

42. The Examiner cannot establish policy for the Commission: he can only interpret or construe, and apply, the policies the Commission lays down. And in the present instance, the most recent expression of Commission policy on the subject makes it quite clear that an applicant may be a "strike" applicant even though it is shown that he has a *bona fide* intent to build and operate the proposed station. Thus, in *Ashboro Broadcasting Company*, *supra*, 20 FCC 2d at 3, the Commission laid it down that it "looks with extreme disfavor upon efforts by licensees, or individuals closely identified with such licensees, to impede the inauguration of a competitive broadcast service by filing strike applications". Further, the Commission ruled (Emphasis in quote supplied):

> "There should by now be no misunderstanding. Any licensee who is found to have participated in the filing of an application, *one* of whose purposes is the obstructing, impeding, or delaying of a grant of another application, places in jeopardy the authorization for the existing station which is the intended beneficiary of the strike application. ***This policy obtains even if the intention to obstruct, impede, or delay is not the sole reason for participation and even if the strike applicant intends to build and operate the proposed station if his application is granted.***"

43. It must, in passing, occur to some that the language in the cited quotation, giving the current definition of what constitutes a "strike" application, is broad enough, construed literally, to encompass *all* applications that are mutually exclusive with previously filed applications. Obviously, such a ridiculous (and illegal) result could not have been contemplated. As the Examiner construes the situation, although he has been unable to find it explicitly articulated in such fashion in Commission lore, the Commission's public interest responsibility extending to, and including, the fostering and encouraging of "arms length" competition in the broadcasting field, is meant to be a prime factor implicit in the definition.[11] Consequently, almost any instance,

[11] Apart from the matter of legality that would preclude the Commission from refusing to consider applications, under all circumstances, that are mutually exclusive with applications filed first, the current definition of what constitutes a "strike" application itself provides no objective criteria on which particular determinations can be made. Indeed, without the factor of "arms length" competition and the other factors enumerated by the Bureau in its brief the Commission, ostensibly, could utilize its definition of a "strike" application to disqualify any subsequently filed application that gave a majority of the Commissioners an adverse visceral reaction. The Examiner does not believe that the Commission could ever have contemplated that kind of bureaucratic despotism when it formulated the policy.

as the Examiner construes the matter, wherein an existing licensee assists, or encourages, a filing by a "friendly" competitor that would *unfairly* or *unjustly*, have the effect of obstructing or blocking the grant of a pending application of an "arms length" competitor would be highly suspect.[12] And that is the principal flaw, as the Examiner perceives it, with the Calandria filing. For the evidence, if it shows anything with clarity, certainly demonstrates that Mr. Calandria is, and was, much more than a former employee of Mr. Griffin, Tung's "arms length" competitor herein: he was, and is, a good friend of Mr. Griffin and of the Griffin family. And it was also quite clear, despite transparent attempts at cover-up, that Calandria sought advice and assistance from Mr. Griffin that were cheerfully furnished. Moreover, the omissions or non-disclosures in pleadings and affidavits have not been satisfactorily explained in the record (*e.g.*, T. 302–317). Even if, as to these matters, Mr. Calandria was merely responding to his counsel's advice, the Commission nevertheless cannot very well condone that kind of caginess by applicants and licensees, unless it is prepared, for the future, to rely upon an army of its own gumshoes instead of upon the complaints of competitors, to bring apparent wrongdoing to its attention. (See especially transcript pp. 302–305, wherein Calandria, it seems, blamed his failure to make a full submission to the Commission prior to designation for hearing upon the advice of his counsel.)

44. In the principal case, coupling the factors already recited with the background of the proceeding, such as, the relatively small community involved and the competitive opportunities therein, the timing of Calandria's filing in relation to Tung's, Tung's earlier efforts in rule-making to have the channel assigned to Picayune, and Griffin's foreknowledge of Tung's intentions, makes inevitable, however reluctant, the Examiner's conclusions that Calandria's application is a "strike" application within the seeming meaning of the Commission's most recent definition of that term. *Cf. W. A. Corbett et al., tr/as AL–OR Broadcasting Co.*, 37 FCC 917, and especially Board Member Nelson's dissenting statement at 37 FCC 925. In arriving at this judgment the Hearing Examiner has given considerable thought to the discussion of the so-called "Strike Issue" in para. 5–10 of the Proposed Conclusions (pp. 43–46), and the precedents therein cited, of the Commission's Broadcast Bureau. He has found the analyses in the Bureau's brief to be helpful, particularly the enumeration of "strike" factors in paragraph 10 thereof, which include, most importantly for the purposes of the present case, the Examiner believes, the matter of "economic and competitive benefit" that are likely to accrue to Mr. Griffin if his friend Calandria were to prevail herein. The Examiner, however, is unable, on the basis of the whole record, and his observations of the demeanor or deportment of the witnesses, to agree with the Broadcast

[12] Of course, if it is established that an application is filed as "part of a scheme to abuse" the Commission's processes (*e.g., Roger S. Underhill*, 22 RR 801, 803–804, cited in para. 8 of the Bureau's Proposed Conclusions) there would be no difficulty in denying such an application as a "strike application". The trouble is that rarely are the facts sufficiently persuasive as evincing such a "scheme". In the case before the Examiner, an acting in concert rather than either an overt conspiracy or a "scheme to abuse" was involved. It must be recognized, though, insofar as the end result is concerned, in the sense of holding up a competing application from receiving a grant and of prolonging the hearing process without just cause, that it does not matter whether the parties got together or acted as part of a "scheme", or that they only acted in concert or *in tandem*, without prior planning, with the competing broadcaster merely encouraging his "friend" to apply and helping the latter along the way.

Bureau's characterizations of the parties and what they did here, which characterizations appear to be an unnecessary over-reaction to what was in its essence merely a failure by the affected parties, *i.e.*, Messrs. Griffin and Calandria, to appreciate the *absolute* necessity of making full and complete disclosures to the Commission at all times when serious charges were made against them. Such disclosures, moreover, should have been made in the pleadings and ought not to have awaited disgorging during cross-examination, even if this would have involved pleading one's evidence in advance. Indeed, the time of common law pleading has long since passed into oblivion and in the present day and age, of social complexity and increasingly complex societal institutions, administrative agencies, the Examiner believes, should insist upon full disclosures, and the complete truth being expressed, even during preliminary skirmishing by *potential* litigators.[13]

45. The Examiner agrees with the Broadcast Bureau's proposed conclusions, para. 1 and 2, and hereby adopts these paragraphs, and deems them to be incorporated by reference herein. He likewise agrees that "There is no evidence that Griffin is the real-party-in-interest; i.e., there is no evidence that Griffin has an ownership interest in, or is or will be in position to actually, or potentially control Calandria's proposed operation" (Bureau's Proposed Conclusions, para. 3, citing *Sumiton Broadcasting Co., Inc.*, 14 RR 2d 1000). He is of the opinion, however, that the record only establishes that Calandria's application was filed for the "incidental" purpose of impeding or delaying the Tung proposal and that Calandria *did* intend to build and operate the FM facility proposed in his application. Since the Calandria application must therefore be denied unless, of course, higher authority may disagree with the Examiner later on, there is no requirement that the Examiner pass upon Calandria's comparative qualifications with Tung. It may be pointed up once again, nevertheless, that in terms of "diversification" as a doctrinaire concept, *i.e.*, insofar as the number alone of media "voices" is to be the subject of comparison (also without regard to the number of competitors in the areas served by facilities in which Tung's principals have an interest), Calandria has a strong preferential point in his favor. Yet while he may not be controlled or dominated by Mr. Griffin in practice, it may not be gainsaid that in Calandria Griffin would have a "friendly" competitor. It may also be noteworthy, again in terms of comparison, that Calandria is not a present resident of Picayune, Mississippi, whereas Mr. Jones II, Tung's active owner and general manager, does reside there and is active in local civic organizations. Thus, taking just these few pro-and-con factors into account, it may be acknowledged here that it is not at all certain Calandria would prevail even if an overall comparative evaluation were to be made.[14]

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[13] If the suggestion in the text, *supra*, is taken to heart by all applicants, and their lawyers, there can be little doubt that it would go a long way in unclogging the Commission's hearing processes, by eliminating futile and unnecessary hearings and sharpening the issues in those instances where hearings are required.

[14] Tung's proposal "to duplicate the programming of its companion standard broadcast station approximately one-third of the time while Andres Calandria proposes independent operation" (Memorandum Opinion and Order designating the applications for hearing, released November 5, 1971, FCC 71–1136, para. 8) could well have weighed heavily against Tung if Calandria had been shown to be other than a "friendly" competitor to Griffin.

46. Since Mr. Calandria has not satisfied the Hearing Examiner, as the initial trier of the facts, by a preponderance of persuasive evidence, that he is basically qualified to be a licensee under the special "strike" issue framed in this proceeding, and since Tung is qualified in all respects, the latter's application can be granted. It is therefore concluded ultimately that the public interest, convenience and necessity will be served by granting the application of Tung Broadcasting Company and denying the application of Andres Calandria herein.

IT IS ORDERED, That, unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the Initial Decision on its own motion pursuant to Rule 1.276, the application of Tung Broadcasting Company for a construction permit for an FM broadcast station to operate in Picayune, Mississippi on Channel #292 (106.3 mcs; 3 kw (H); 3 kw (V); 177 feet) is hereby GRANTED, and that the mutually exclusive application of Andres Calandria for a construction permit for such station, also in Picayune, Mississippi, is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
DAVID I. KRAUSHAAR, *Hearing Examiner.*

F.C.C. 72R–286

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
KENNETH S. BRADBY AND GILBERT L. GRANGER, DOING BUSINESS AS VIRGINIA BROADCASTERS, WILLIAMSBURG, VA.	Docket No. 17605 File No. BP–16829
ROSA MAE SPRINGER, TRADING AS SUFFOLK BROADCASTERS, SUFFOLK, VA.	Docket No. 17606 File No. BP–17274
JAMES RIVER BROADCASTING CORP., NORFOLK, VA.	Docket No. 18375 File No. BP–17268
For Construction Permits	

MEMORANDUM OPINION AND ORDER

(Adopted October 3, 1972; Released October 4, 1972)

BY THE REVIEW BOARD:

1. Following issuance of an Initial Decision (FCC 72D–34, released May 22, 1972), proposing the grant of James River Broadcasting Corporation's (James River) application, separate dismissal agreements were entered into between James River and the losing applicants. Petitions for approval of these agreements were filed and are now before the Board for consideration, along with the Initial Decision.[1]

2. The Board has examined the facts set forth in the petitions and finds that they satisfy the requirements of the rules and applicable precedent. While the Bureau raised questions concerning both of the agreements, these have been answered satisfactorily in responsive pleadings. Therefore, reimbursements in the full amounts specified in the agreement will be approved. The only remaining question is whether publication is necessary pursuant to the requirements of Section 1.525(b)(1). After examining the Administrative Law Judge's careful analysis of the 307(b) issue, the Board has concluded that withdrawal of the applications would not unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several states and communities, and that publication is therefore not required.

3. IT IS ORDERED, That the aforesaid Petitions for Approval of Agreements and Dismissal of Applications ARE GRANTED; that

[1] The following pleadings are before the Board: (a) joint petition for approval of agreement, dismissal of application, and grant of remaining application without hearing, filed August 18, 1972, by James River Broadcasting Corporation and Virginia Broadcasters; (b) joint petition for approval of agreement, filed August 21, 1972, by Suffolk Broadcasters and James River; (c) comments on joint petitions, filed August 31, 1972, by the Broadcast Bureau; (d) reply to comments on joint petition, filed September 14, 1972, by Virginia Broadcasters; (e) response to Broadcast Bureau's comments, filed September 19, 1972, by James River; and (f) reply to Broadcast Bureau's comments on joint petitions, filed September 25, 1972, by Suffolk Broadcasters.

the agreements ARE APPROVED; that the proposed grant of the James River Broadcasting Corporation IS AFFIRMED; that the applications of Virginia Broadcasters and Suffolk Broadcasters ARE DISMISSED; and that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72D-34

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
KENNETH S. BRADBY AND GILBERT L. GRANGER, DOING BUSINESS AS VIRGINIA BROADCASTERS, WILLIAMSBURG, VA.	Docket No. 17605 File No. BP-16829
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JAMES RIVER BROADCASTING CORP., NORFOLK, VA.	Docket No. 18375 File No. BP-17268
For Construction Permits	

APPEARANCES

Robert W. Healy, on behalf of Kenneth S. Bradby and Gilbert L. Granger, d/b as Virginia Broadcasters; *Lewis I. Cohen* and *David Meyers*, on behalf of Rosa Mae Springer, tr/as Suffolk Broadcasters; *Lauren A. Colby* and *Richard J. Tarrant*, on behalf of James River Broadcasting Corporation; *Vernon L. Wilkinson*, on behalf of KFAB Broadcasting Company; and *Gerald M. Zuckerman*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

INITIAL DECISION OF HEARING EXAMINER MILLARD F. FRENCH

(Issued May 16, 1972; Issued May 22, 1972)

PRELIMINARY STATEMENT

1. The applications of Kenneth S. Bradby and Gilbert L. Granger, d/b as Virginia Broadcasters (hereinafter Virginia) and Rosa Mae Springer, tr/as Suffolk Broadcasters (hereinafter Suffolk) were designated for hearing on July 19, 1967. Thereafter, the application of James River Broadcasting Corporation (hereinafter James River) was also designated for hearing and consolidated into the Virginia Broadcasters—Suffolk Broadcasters proceeding. The three applications are mutually exclusive and were designated for hearing upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations and the availability of other primary service to such areas and populations.

2. To determine with respect to the application of Virginia Broadcasters:

(*a*) Whether the $18,000 loan commitment to the Grangers is still available.

(*b*) Whether, assuming the funds noted in (*a*) above, are available, the applicant has sufficient additional funds available to construct and operate its proposed station for one year.

(*c*) Whether, in light of the evidence adduced pursuant to (*a*) and (*b*) above, the applicant is financially qualified.

3. To determine the efforts made by James River Broadcasting Corporation to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests.

4. To determine with respect to the application of James River Broadcasting Corporation:

(*a*) The cost of acquiring an antenna-transmitter site.

(*b*) Whether, in light of the evidence adduced pursuant to (*a*) above, the applicant is financially qualified.

5. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the operations proposed in the above-captioned applications would better serve the public interest.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the applications should be granted.

Acting on a petition to enlarge issues filed by James River, the Review Board added the following issues:

8. To determine the efforts made by Kenneth S. Bradby and Gilbert L. Granger, d/b as Virginia Broadcasters and Rosa Mae Springer, d/b as Suffolk Broadcasters to ascertain the community needs and interests of the areas to be served by such applicants and the means by which such applicants propose to meet those needs and interests.

9. To determine with respect to the application of Rosa Mae Springer, d/b as Suffolk Broadcasters:

(*a*) Whether Rosa Mae Springer will have the necessary net available current liquid assets to meet her obligations to the applicant.

(*b*) Whether, in light of the evidence adduced, pursuant to subpart (a) of this issue, the applicant is financially qualified.

10. (*a*) To determine whether Rosa Mae Springer, d/b as Suffolk Broadcasters, failed to amend or attempted to amend her application within 30 days after substantial changes were made, as required by Rule 1.65.

(*b*) To determine the effect of the facts adduced pursuant to subpart (a) of this issue on this applicant's requisite and comparative qualifications to receive a grant of its application.

By a Memorandum Opinion and Order released May 23, 1969, KFAB Broadcasting Company, licensee of Station KFAB, Omaha, Nebraska, was granted intervention and additional issues were specified:

11. To determine whether James River Broadcasting Corporation would be able to adjust and maintain its proposed directional antenna system within the maximum expected operating values of radiation which it specifies.

12. To determine whether during critical hours radiation from the James River Broadcasting proposal toward the 0.1 mv/m contour of Station KFAB would exceed that permitted by the provisions of Section 73.187 of the Commission's Rules.

13. To determine whether the condition proposed in the Commission's Memorandum Opinion and Order of November 15, 1968, that the inverse distance field at one mile from the James River Broadcasting proposal toward the service area of Station KFAB at a bearing of 291.5 degrees true shall not exceed 477.9 millivolts per meter, will fully protect KFAB during critical hours, and, if not, what value and other conditions would be required in order to protect KFAB during critical hours.

2. After several prehearing conferences, the hearing commenced on May 22, 1969, and continued on May 23, 26–28, July 29–30, October 21 and November 21, 1969. Additional hearings were held regarding the *Suburban* issues on August 17–19, 1971. The record was closed by an order released September 29, 1971, but was subsequently reopened and was closed on April 7, 1972. Proposed findings and conclusions were filed by the Broadcast Bureau on December 14, 1971 and by the three applicants on January 10, 1972. Reply findings and conclusions were filed by James River on January 26, 1972 and by the other two applicants on January 31, 1972, while KFAB Broadcasting Company filed a statement on the last mentioned date taking no position with respect to either applicant.

FINDINGS OF FACT

Issue 1—Areas and Populations

3. This proceeding involves three mutually exclusive applications, each for a new Class II standard broadcast station to be operated daytime only on 1110 kHz at one of three different communities. Virginia Broadcasters proposes to operate in Williamsburg, Virginia with a power of 250 watts, nondirectional; Suffolk Broadcasters proposes to operate in Suffolk, Virginia with a power of 250 watts, nondirectional; and James River Broadcasting Corporation proposes to operate in Norfolk, Virginia with a power of 50 kilowatts, directionalized.

Virginia Broadcasters (Williamsburg, Virginia)

4. According to the 1970 U.S. Census, Williamsburg, an independent city, had a population of 9,069 persons. This figure represents an increase of 32.7% over the 1960 Census. Williamsburg is not part of any urbanized area.

5. Williamsburg is located in the southeast sector of the state about 40 miles northwest of Norfolk and 38 miles north of Suffolk. The broadcast facilities in Williamsburg include one AM station, one commercial FM station and one educational FM station as follows:

AM: WBCI, 740 kHz, 500 watts, daytime only.

FM: WBCI–FM, 96.5 MHz, 50 kw/430 ft. and WCWM, 89.1 MHz, 10 watts (Educ.).

6. Operating as proposed, Virginia Broadcasters would furnish a primary service within its 0.5 mv/m contour to 44,960 persons in a 725 square mile area entirely in Virginia. The proposed service area

is roughly circular in shape and of approximately 17 miles radius except for an elongation in the southeast direction. The station's proposed 2 mv/m contour falls short of reaching either Suffolk or Norfolk, thus the proposed station will not serve either community. Field strength contours were projected on the basis of an antenna effective field of 95 mv/m in conjunction with ground conductivity values from Figure M–3 of the Rules, and the conductivity of the James River was assumed to be 40 mmhos/m north of the James River Bridge and 5,000 mmhos/m south of the bridge (salt water).

7. Standard broadcast stations WBCI in Williamsburg, Virginia and WRVA in Richmond, Virginia provide primary service of 0.5 mv/m or greater to all of the rural areas to be served by Virginia Broadcasters. In addition, 22 other AM stations serve portions of such areas so that in the aggregate there are from 3 to 18 AM services available therein. The area receiving 3 AM services includes 458 persons in 25.4 square miles, and the area receiving 4 AM services includes 1,497 persons in 68.4 square miles. Williamsburg is the only urban area within the proposed station's 2 mv/m contour. The only AM primary service of 2 mv/m or greater received in Williamsburg is from WBCI, the local station.

8. Thirteen FM stations provide service of 1.0 mv/m or greater to various portions of the proposed service area to the extent that all portions receive at least 5 aural services (AM plus FM). Williamsburg is served by the following six FM stations, all in Virginia, which together with WBCI (AM) provide the city with a total of 7 aural services:

Station:	*Location*
WVEC–FM	Hampton.
WGH–FM	Newport News.
WTID–FM	Norfolk.
WTAR–FM	Do.
WRVA–FM	Richmond.
WBCI–FM	Williamsburg.

Suffolk Broadcasters (Suffolk, Virginia)

9. Suffolk, Virginia is an independent city of 9,858 persons located some 20 miles southwest of Norfolk, Virginia. In 1960, Suffolk's population was 12,609, thus the 1970 figure represents a decrease of 21.8%. Suffolk is not a part of any urbanized area. Broadcast facilities in the city consist of one AM and one FM station as follows:

AM: WLPM, 1450 kHz, 1 kw/0.25 kw, unlimited time.
FM: WXYW, 92.9 MHz, 80 kw/350 ft.

10. Suffolk Broadcasters' proposed new station will provide a primary service within its 0.5 mv/m contour to 83,125 persons in 1,220 square miles. The pertinent field strength contours were projected using an antenna effective field of 93.5 mv/m in conjunction with ground conductivity values from Figure M–3 of the Rules except that 40 mmhos/m was used for the James River north of the James River Bridge at Newport News. This contour defines an approximately circular area of about 20 miles radius except to the northeast where there is an extension of the area resulting from the signal traversing salt water paths. The proposed 2 mv/m contour will not encompass any portion of either Williamsburg or Norfolk; therefore, Suffolk

Broadcasters will not furnish a primary service to either city. In addition to Suffolk, portions of two other urban places would be provided 2 mv/m or greater service by the proposed station, namely, 25% of Chesapeake and 5% of Portsmouth, Virginia. A portion of the proposed service area will penetrate the Virginia/North Carolina border to the south to a depth of about eight miles.

11. Standard broadcast stations WLPM in Suffolk, WCMS and WTAR in Norfolk, and WGH in Newport News provide primary service of 0.5 mv/m or greater to all of the rural areas to be served by the proposed new station. Another 15 AM stations serve portions of such area so that in combination these stations provide from 6 to 10 or more services in any part of the rural area. Stations WLPM in Suffolk, WCMS and WTAR in Norfolk, WCVU and WPMH in Portsmouth, and WGH in Newport News provide daytime AM primary service of 2 mv/m or greater to Suffolk. At least 5 stations serve the Chesapeake and Portsmouth segments that would be served by the proposed station.

12. Suffolk is served by the below-listed eight FM stations, all in Virginia, with a signal of at least 1 mv/m:

Station:	*Location*
WNOR–FM	Norfolk.
WTID–FM	Do.
WTAR–FM	Do.
WXRI	Do.
WYFI	Do.
WVEC–FM	Hampton.
WGH–FM	Newport News.
WXYW	Suffolk.

These FM stations together with the six AM stations that serve the city provide a total of 14 aural (AM and FM) services in Suffolk during daytime hours.

James River Broadcasting Corporation (Norfolk, Virginia)

13. Norfolk, Virginia is an independent city of 307,951 persons (a 1% increase over 1960) and one of the two central cities of the Norfolk-Portsmouth Urbanized Area which has a total population of 668,259 persons. Norfolk is also one of the two central cities of the Norfolk-Portsmouth Standard Metropolitan Statistical Area which includes Chesapeake City (population 89,580), Portsmouth City (population 110,963) and Virginia Beach City (population 172,106) for a total population of 680,600 persons. Norfolk has 4 AM stations, 7 FM stations and 3 TV stations as listed below:

AM: WTAR, 790 kHz, 5 kw, DA–N, U; WRAP, 850 kHz, 5 kw/1, kw, DA–2, U; WNOR, 1230 kHz, 1 kw/0.25 kw, U; and WCMS, 1050 kHz, 5 kw, DA–Day (CP).

FM: WCMS–FM, 100.5 MHz, 20 kw/205 ft. (CP); WNOR–FM, 98.7 MHz, 55 kw/165 ft. (CP); WTID–FM, 104.5 MHz, 50 kw/400 ft. (DA); WRVC, 102.9 MHz, 8.7 kw/95 ft.; WTAR–FM, 95.7 MHz, 40 kw/880 ft.; WXRI, 105.3 MHz, 50 kw/340 ft.; and WYFI, 99.7 MHz, 30 kw/340 ft.

TV: WTVQ, Ch. 49, 245 kw/330 ft. (CP); WTAR–TV, Ch. 3, 100 kw/980 ft.; and WHRO–TV, Ch. 15, 257 kw/480 ft. (Educ.) (CP).

14. Under the proposed mode of operation, James River's station would provide a new primary service to 963,351 persons in an area of 4,840 square miles encompassed by the 0.5 mv/m contour. The locations

of the pertinent field strength contours defining the service area of the proposed station were based upon effective fields from the proposed directional antenna pattern in conjunction with ground conductivities from Figure M–3 of the Rules except in a few water areas. The conductivity of Chesapeake Bay was assumed to be 40 mmhos/m above and 5,000 mmhos/m below a line drawn west from Cambridge, Maryland. A conductivity of 40 mmhos/m was utilized for the James River above the James River Bridge and 5,000 mmhos/m below. The conductivity used for Albermarle Sound and Pamlico Sound was 40 mmhos/m. All other rivers were assumed to be 10 mmhos/m. There would be no significant difference in the rural "grey" area near Albermarle Sound had a conductivity of 5,000 mmhos/m been used in lieu of 40 mmhos/m for Albermarle Sound. The proposed service area is of irregular shape and elongated in the north-south direction. The reach of the 0.5 mv/m contour is such that it will penetrate slightly the Maryland/Virginia border some 70 miles to the north of Norfolk and the Virginia/North Carolina border to the south to a depth of approximately 60 miles.

15. James River's proposed station will not only serve the communities of Williamsburg and Suffolk with a signal of at least 2 mv/m but will also furnish a primary service of at least 0.5 mv/m to almost the entire area in which each of the other proposed stations would provide a primary service. Of the 44,960 persons in 725 square miles to be served by the proposed Williamsburg station, James River will serve 39,875 persons (89%) in 616 square miles (85%). Of the 83,125 persons in 1,220 square miles to be served by the Suffolk station, James River will serve 77,635 persons (93%) in 1,110 square miles (91%).

16. Thirty-eight AM stations furnish primary service of 0.5 mv/m or greater to portions of James River's proposed rural service area and together make available from one to ten or more services in any one part of the area. Included in the rural area receiving only one AM service are 1,363 persons in approximately 245 square miles. This area is swampy in character and is situated 5 to 25 miles south of Albermarle Sound and about 70 to 90 miles south of Norfolk. Included in the rural areas receiving two AM services are a total of 1,059 persons in approximately 160 square miles, which said areas lie in this same general vicinity except for a 12-square mile area containing 121 persons located 48 miles northwest of Norfolk. Among the urban areas that would be served are Williamsburg which receives only one primary AM service from its local station (WBCI), and Elizabeth City, North Carolina (population 14,062) which receives two primary AM services from its two local stations (WGAI and WCNC). The combined urban and rural populations and areas that presently receive from one to four AM primary services and which will receive an additional service from the proposed station are set forth in the following table:

Existing AM services	Population	Area (sq. mi.)
1	[1] 8,195	248
2	[2] 15,121	163
3	5,703	203
4	3,725	167

[1] Includes 6,832 persons in Williamsburg (1960 U.S. census).
[2] Includes 14,062 persons in Elizabeth City, North Carolina (1960 U.S. census).

17. Seventeen FM stations provide service of 1.0 mv/m or greater to portions of James River's proposed service area. Consideration of FM service does not affect the rural area that presently receives only one AM service and causes only a small reduction in the rural area receiving only two services. Elizabeth City, North Carolina which lies within the proposed service area receives three aural services (two AM and one FM). Williamsburg receives six FM services in addition to the single AM service provided by the local station. The following table shows the populations and areas that have available from one to four aural (AM and FM) services:

Existing AM and FM services	Population	Area (sq. mi.)
1	1,363	248
2	938	151
3	[1] 18,515	231
4	2,077	103

[1] Includes 14,062 persons in Elizabeth City, N.C.

18. During daytime hours Norfolk receives primary AM service of 2 mv/m or greater and FM service of 1 mv/m or greater from the following stations all of which are located in Virginia:

AM station:	*Location*
WTAR	Norfolk.
WNOR	Do.
WCMS	Do.
WRAP	Do.
WCVU	Portsmouth.
WPMH	Do.
WHIH	Do.
WTID	Newport News.
WGH	Do.
WVEC	Hampton.
WVAB	Virginia Beach.
WCPK	Chesapeake (part of city).

FM station:	*Location*
WTAR–FM	Norfolk.
WNOR–FM	Do.
WCMS–FM	Do.
WTID–FM	Do.
WRVC	Do.
WXRI	Do.
WYFI	Do.
WGH–FM	Newport News.
WVEC–FM	Hampton.
WXYW	Suffolk.

Issue 2—Virginia Broadcasters' Financial Qualifications

19. The financial issue designated against Virginia Broadcasters is a limited one. It does not place the applicant's cost estimates into issue but, rather, seeks to determine whether the applicant has enough financial support to carry out its proposal. As noted in the July 1967 designation order, Virginia Broadcasters will require a total of $60,580 to construct the station and operate it for one year without revenues. Of this amount, $10,000 represents Virginia Broadcasters' estimate of

what it would cost to purchase a site for its transmitter on Carriage Road.

20. The Carriage Road property is now owned by G-Square, Inc., a corporation wholly owned by Gilbert Granger, a partner in Virginia Broadcasters. Whether the property is transferred to Virginia Broadcasters or leased to Virginia Broadcasters is not material, since in neither event will Granger require the applicant to make payments during its first year of operation. There are no encumbrances on the Carriage Road property.

21. With the availability of a transmitter site, Virginia Broadcasters requires $50,580 to construct and operate the station. Gilbert Granger and his wife (as individuals and as officers of G-Square, Inc.) have agreed to loan Virginia Broadcasters the necessary funds. Granger expects to be repaid when the station can afford it.

22. The Grangers' joint balance sheet lists cash on hand, on deposit and in savings totaling $18,230.38, however, not all of this amount is available. A $10,000 savings certificate that is being used as collateral is included in the $18,230 total. Therefore, the Grangers may be credited with having $8,230 in cash. No other liquid assets are shown. Although the Grangers own securities, these secure a note and are not relied upon to fund the radio station. Accounts receivable ($9,835.00 above a bad debt reserve) are listed and Mr. Granger testified that he could collect $9,000 within several months. However, the receivables are from Mr. Granger's accounting practice and there is nothing in the record which permits a conclusion that the accounts receivable will not be needed to keep the accounting practice going. The Grangers have $1,000 in liabilities (not including a debt to G-Square, Inc.). Thus, the Grangers have $7,230 in liquid assets above current liabilities.

23. G-Square, Inc. owns property at 1005 Richmond Road in Williamsburg. The 100′ by 125′ property includes a three-story brick building, part of which is being used by Granger's accounting firm and part of which is being rented as an apartment. The property was acquired in September 1964 for $27,500. Granger proposes to sell or mortgage the property, which is unencumbered, in order to finance the proposed station. The record shows that this property was appraised by Thomas M. Smith who has been a real estate broker in Williamsburg for three years. He is a graduate of the Realtors Institute at the University of Virginia, a school involved in the areas of real estate sales and appraisals. Mr. Smith has done approximately 100 appraisals in Williamsburg for a bank, for the College of William and Mary (which grants loans to its faculty) and for attorneys or individuals. Mr. Smith appraised the property at 1005 Richmond Road as having a market value of $58,000. The record also shows that G-Square, Inc. owes $4,803.17 in current liabilities and has liquid assets of $594.78. It has gross assets (consisting mostly of real estate) valued by Granger at $137,872, and approximately $75,000 in long-term liabilities.

Issue 3—Community Survey—James River

24. The principals of James River conducted their first survey in 1966 and such survey related solely to programming needs of the area. In its original proposal, James River did not make a specific programming proposal based on area problems, but rather based its proposal on general programming needs of the area that were derived from

Mrs. Benns' personal knowledge of the area. Mrs. Benns conceded that there were no specific community leader contacts made for the purpose of preparing the 1966 programming proposal.

25. In July and December 1968, contacts were again made solely relating to programming. The record also shows that James River filed amendments in July and December 1968 specifying 9.8 hours of news per week, 2 hours of public affairs, and 5 hours of all other programs, exclusive of entertainment and sports. However, such proposals were based on a general conclusion by Mrs. Benns that such amounts were needed, and she had no specific programs or specific community needs in mind.

26. On May 15, 1969, Mrs. Benns first became aware of the Commission's requirement with respect to community problems and needs when her counsel so informed her. As a result, another survey was conducted during May 1969. This survey was conducted from Washington by Mrs. Benns telephoning some of the persons who had been contacted in the earlier programming surveys and asking them their views as to community needs. The following persons were contacted during this survey:

Mr. St. Leger M. Joynes, Norfolk Chamber of Commerce; discussion leader with the Leadership School.
Chief Bruce Keith, Public Information Office, Norfolk Naval Base.
Mr. George Crawley, director of STOP, Norfolk.
Dr. Sam Ray, assistant superintendent of schools, Norfolk.
Mr. Hanbury, assistant to the Mayor of Norfolk.
Mr. Evett Allen, assistant city manager and director of Parks and Recreation, Norfolk.
Captain E. G. Watts, police force, Norfolk.
Mr. Herbert Lee, director of Public Safety, Norfolk.
Dr. Bernard Batleman, orthodontist, Norfolk.
Mr. Walter (Hanbury or Hamburg), assistant superintendent, Recreation Department, Norfolk.
Mayor James Hope, Suffolk.
Mr. William Worthington, attorney, Norfolk.
Mr. Al Mailhes, manager, Chamber of Commerce, Virginia Beach.
Mr. Denzil Skinner, director of Community Planning, Norfolk.
Mr. W. A. Smith, assistant city manager and in charge of General Services Administration, Norfolk.
Mr. Fuller, Colonial Williamsburg Employment Agency, Williamsburg.
Reverend Ernest Hontz, chairman, Radio Ministry, Norfolk.
Mr. Robert Lawrence, associate director, Model Cities Program, Norfolk.

27. The following needs were determined through the above telephone calls placed by Mrs. Benns:

Annexation, or consolidation of southside cities.
Garbage disposal.
Water supply.
Urban development.
Room for residential and industrial expansion.
Employment.
Completion of the cultural and recreational center.
"As in many cities, crime, narcotics, air pollution, water pollution, better understanding between economic groups, better communication between the races, and also between the generations, more money for better salaries for public servants, and teachers are all problems."
Hunger.
Communication with the public as to educational programs available.
Safety on the highway.
Comprehensive medical center.

Better knowledge of employment opportunities.
More citizens become actively interested in and involved in the political life of the community.

28. James River undertook another survey in 1970 and 1971 which had two separate parts. The first part consists of a mailing survey conducted in February 1970. For this survey, James River sent a prepared questionnaire with a covering letter and a stamped, addressed, reply envelope to 173 persons whose names were selected at random from listings of civic and fraternal organizations, and from the telephone directory to obtain a cross section of the general listening audience. In response to the 173 mail survey forms sent out, 21 replies were received. James River made no other attempt to conduct a random mail survey of the general public.

29. The second part of the 1970–1971 survey conducted by James River took place during the period December 1969 to April 1970, and after February 23, 1971, the release date of the Commission's revised *Primer*. Mrs. Benns was supplied 1970 census data by her counsel on some date after February 23, 1971, but could not recall the precise date and did not know to what extent she used this information for demographic purposes in outlining the scope and direction of the survey. James River compiled a list of prospective interviewees in much the same manner it had compiled its earlier lists. It utilized lists of groups in categories such as educational, ethnic groups, civic leaders, etc., and says it tried to contact at least one representative from each group on the list. James River did not break down separate lists for community leaders and the general public, and the list of interviewees does not indicate whether an individual was contacted for purposes of the general public or community leader survey.

30. James River does not propose to provide specific service to Newport News and Hampton, Virginia, and no interviews were conducted there, because they are separated from Norfolk by a toll tunnel and the area is served by several existing stations. The applicant proposes to concentrate on service to the Norfolk urbanized area, Suffolk, Williamsburg and the underserved areas of North Carolina. The record shows that the following persons were interviewed during the 1970–1971 survey:

Mr. Billups, president of Norfolk-Portsmouth-Virginia Beach-Chesapeake-Newport News International Longshoremens Association; member, Board of Commission of Virginia State Port Authority.
Mrs. Beverly Blake, assistant to director of American Federation of Government Employees.
Mr. Dick Cockrell, agriculture agent for Virginia Beach.
Mrs. Linda Butler, member PTA, Portsmouth.
Mrs. Alice Clements, member PTA, Portsmouth.
Mrs. Vernie B. Ogletree, assistant to executive director of Norfolk-Virginia Beach-Chesapeake Retail Merchants Association.
Mr. Bridges, assistant airport manager, Portsmouth.
Mr. Lee, personnel director, Portsmouth General Hospital; member PTA.
Mrs. Della Cretmur, housewife, Portsmouth.
Mr. John B. Tallent, manager of Membership and Internal Affairs, Department of Norfolk Chamber of Commerce.
Mr. Robert Poulos, member Masonic Lodge, Downtown Retail Merchants Association, Elizabeth City.
Mr. Emmet Nixon, janitor, Elizabeth City.
Mrs. Margaret Bunch, secretary.

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Miss Virginia Sheary, music teacher, Elizabeth City.
Mr. Welman Jones, student, Elizabeth City.
Miss Ida Blount, student, Elizabeth City.
Mr. Wallace Riddick, salesman, Elizabeth City.
Mr. Sawyer, president, Downtown Retail Merchants Association, Elizabeth City.
Mr. Manuel McCeluen, longshoreman.
Mrs. L. S. Jones, past president Lions Auxiliary, Sandwich Shop Owner, Elizabeth City.
Mr. Laverne Twiford, commercial fisherman, Stumpy Point.
Mr. Jessie Spurel, construction worker, Alligator, N.C.
Mr. J. C. Westbury, farmer, Gum Neck, N.C.
Mr. Danny Brickhouse, student, Alligator, N.C.
Mr. Rim Coltrain, operator of a dairy stand, Kill Devil Hills, N.C.
Mr. John Tyler, Park Service, Kill Devil Hills, N.C.
Mr. Junior Thomas, factory worker, Columbia, N.C.
Mr. Jasper Houper, Stumpy Point, N.C.
Mr. George Payne, operator of grocery store, Stumpy Point, N.C.
Mr. Carley Spencer, owner of restaurant, Columbia, N.C.
Mr. J. G. Cahoon, retired farmer, Gum Neck, N.C.
Mr. Curtis Liverman, prison guard, Gum Neck, N.C.
Mr. Wallace Cartwright, retired from State Highway Commission, Gum Neck, N.C.
Mrs. Payne, housewife, Gum Neck Landing, N.C.
Mrs. Lydia Spencer, unemployed, Mt. Pleasant, N.C.
Mr. Mack Etherege, owns & operates fishing & hunting center, Wanchese, N.C.
Mrs. Hilda Houch, motel manager, Nags Head, N.C.
Mr. Frederick Johnson, operator of marina.
Mr. Brantley Twiford, operates Manteo Airport.
Miss Shiela Armstrong, student.
Mr. Joe Brickhouse, farmer, New Lands, N.C.
Mr. J. W. Cooper, farmer, New Lands, N.C.
Mr. Richard Woodley, Scuppernong, N.C.
Mr. Ivy Simpson, service station attendant, Creswell, N.C.
Mr. Arthur Dall, truck driver, Creswell, N.C.
Mr. Percy Williams, agriculture extension agent, 4–H, Elizabeth City, N.C.
Unidentified Young Man, electrician, Elizabeth City, N.C.
Mr. J. Mueller, Public Affairs Office, 5th Naval District, Atlantic Fleet.
Commander Schlosser, Public Affairs Office, 5th Naval District, Atlantic Fleet.
Dr. Hugo A. Owens, dentist, member city council, Chesapeake, NAACP, past president Council on Human Relations.
Mr. J. R. Mounie, assistant principal Churchland High School, Portsmouth; member, Youth Bureau.
Mr. M. D. Davis, project supervisor, Portsmouth Senior Citizens Center.
Mrs. Wood, secretary, Portsmouth Senior Citizens Center.
Father C. Charles Vache, pastor, Trinity Church, Portsmouth; member, Housing Board.
Mrs. Mary L. Dixon, counselor & office manager, Portsmouth Employment; member Business & Professional Women.
Mr. Frank L. Kirby, executive director, American Red Cross, Portsmouth; member, Kiwanis Club.
Father Cilinski, pastor, St. Paul's Catholic Church; past president, Ministerial Association, Portsmouth.
Mr. Robert Barker, public information officer, Portsmouth.
Mr. John Connell, executive director, YMCA, Portsmouth.
Miss Mary Gardner, clerk, Naval Exchange, Portsmouth.
Mr. R. W. Lewis, Police Department, Portsmouth.
Mr. George Hendrickson, assistant superintendent, Portsmouth Department of Social Services.
Mr. Robert A. Metrokos, executive vice president, Portsmouth Chamber of Commerce.
Mr. John Nix, deputy executive director, Virginia Port Authority.
Mr. C. Hugo Curl, coordinator of Public Relations & Publications, Norfolk State College; member, Virginia Beach School Board; Tidewater Drug Abuse Committee; Welfare Board of Virginia Beach.

Dr. Roy A. Woods, Norfolk State College.
Mrs. Jackson, associate of Reverend H. T. Myers, Mt. Olive Baptist Church; preschool instructor.
Mr. Ralph, director, Suffolk Chamber of Commerce.
Mrs. Ellis James, Public Affairs Office, YWCA.
Mr. Judson E. Hodges, past president of Kiwanis.
Mr. William Boykin, chairman, United Council for Drug Abuse.
Mr. Ephraim Spiver, United Jewish Federation, Inc. of Norfolk and Virginia Beach executive director.
Mrs. Turner, director, Suffolk Department of Welfare.
Captain C. H. Payne, information officer, Virginia Beach Police Department.
C. D. Grant, deputy chief of police, Norfolk.
Mr. Williams, personnel director, Norfolk Shipbuilding & Drydock Corp.
Major Hipps, director, Salvation Army of Norfolk.
Mr. Lloyd W. Wood, director, Norfolk YMCA.
Reverend Milton Reid, pastor, New Calvary Baptish Church, Norfolk.
Mrs. Sara Herring, director, YWCA, Norfolk.
Mrs. Sykes, secretary, New Calvary Baptist Church, Norfolk.
Mrs. Freeman, director, Child Care Center, Norfolk.
Mr. Joseph Jordan, Jr., lawyer, member Norfolk City Council.
Mr. C. W. Calhoun, Jr., principal, Roberts Park Elementary School, Norfolk.
Mr. Frank Creasy, public information officer, Virginia Beach.
Chief H. G. Luberacki, media chief information officer, Fifth Naval District.
Mrs. Mary B. Jones, assistant to Red Cross director, Norfolk; secretary, Navy Department, Fifth Naval District.
Mrs. Robert Hailey, president, Norfolk-Virginia Beach League of Women Voters.
Dr. John Tabb, director Institutional Studies, Old Dominion University, Norfolk.
Mr. Davis Monola, director, Department Community Improvements, Norfolk.
Mr. M. O. Wilcox, superintendent of Department of Public Buildings.
Mr. P. L. Bryan, manager, Virginia State Employment Commission, Norfolk.
Mr. Donald C. Wingo, superintendent of Department of Recreation, Norfolk; trustee and active member of First Baptist Church.
Mr. Spence, secretary to County Commission, Elizabeth City.
Mr. J .H. Webster, mayor, Elizabeth City; member of Rotary Club.
Mr. W. C. Owens, chief of police, Elizabeth City.
Mr. Lem Cahoon, chairman, County Commission, Tyrrell County, N.C.
Mr. Thomas K. Yerby, Jr., sheriff of Tyrrell County, N.C.
Mr. Charles Swain, assistant chief of Tyrrell County Volunteer Fire Department.
Mr. Philip House, county director of Farmers Home Administration Credit Agency, Department of Agriculture, Tyrrell County.
Mrs. Pauline Bateman, nurse, Tyrrell County Health Department.
Mrs. Phoebe Davenport, assistant to director of Tyrrell County Schools.
Mrs. Frances Voliva, home economics agent, Agricultural Extension Service, Tyrrell County.
Mrs. W. E. Bateman, director, Tyrrell County Social Services Commission.
Mr. Sheldon O'Neal, tax assessor & assistant to chairman of County Commission, Dare County, N.C.
Mr. Kenneth Doughty, county building inspector, Dare County, N.C.

31. As a result of its 1970–1971 survey, James River ascertained that the following problems and needs of the area were expressed, and the exhibits show the persons suggesting such needs:

Better relations and communication between economic classes.
Apprentice programs to train the underprivileged who are not interested in going to a regular school; also vocational programs.
More stable industries and small businesses.
Steady jobs for persons of all ages.
More jobs and industries to keep young people from moving out of area and eliminate need for people to commute long distances to work.
More jobs for minorities, especially Blacks.
Jobs for handicapped young people.

Additional housing needed to relieve overcrowding.
Slum eradication.
Better management of public housing.
More homes for low income and middle class families.
Recreational facilities for persons of all ages, especially in the winter.
Drug use and abuse; parent education and stricter laws; rehabilitation program.
Alcoholism.
Better roads and streets.
Better public transportation system.
Four-lane road from Elizabeth City to Norfolk.
Public safety programs.
Ecology (clean air, water, conservation, etc.).
Taxes too high for services received.
Utility rates increasing too fast.
Garbage disposal.
Renewal of downtown areas with additional parking; urban renewal; city beautification; cleaner city.
Improvement of school system; new buildings; public kindergartens; equality in teacher salaries; improvement in quality of teachers.
Cars for driver education program.
Better medical facilities; doctors who will make house calls.
Development of a major medical center.
More frequent and accurate weather forecasts; more publicity for recreational and sport activities.
Better relationship between Navy personnel and public; especially credit stores; better credit practices; standardization of prices in chain stores.
Needs of elderly; more retirement and convalescent homes; meals prepared and delivered; companionship; referrals on housing and hospital care, etc.
Poverty programs.
Fewer "X" rated movies and adult book stores.
Public understanding of the problems of government and taxes; more Federal and State money for cities.
Crime.
Need for better understanding of the necessity of laws and law enforcement.
Metropolitan government: consolidation, cooperation and consolidation of certain services.
Respect and appreciation of facilities provided by the city.
Better fire protection.
Better police protection; improvement in court system.
Better juvenile detention facilities.
More exposure to arts and cultural activities for children.
Programs for personal development of young adults to prevent them from drifting or turning to crime.
Black history as a required school course, particularly for white people.
Better city maintenance services for Black areas.
Special government agency to promote Black involvement in business.
Better training for policemen in human relations.
War on racism and injustice to minorities; active training area of institutional racism; communication between races; better public image of Negro educational facilities; improvement of Black community through education.
Facilities for care and feeding of underprivileged children.
Busing of school children.
Intermixing of farmers and urban development.
Host families for international visitors.
More information re activities of Chamber of Commerce, Kiwanis Club, Community Funds, YMCA and YWCA programs, etc.
Industrial park for Suffolk.
Large quality department store in downtown Elizabeth City.
Better fire protection for Kill Devil Hills.
Outer Banks Conservation.
Peace in Viet Nam.

32. James River proposes to meet the problems and needs set forth in the preceding paragraph by presenting the following programs:

(*a*) *Rap '71*, daily, 12:05 to 12:25 p.m. This will be a telephone call-in program dealing with the needs detailed above. Each program will deal with a different issue and a moderator will pose questions to be answered or commented upon by the listening audience. Also, people with expertise in the particular field under discussion will be invited to participate in the program at the studios.

(*b*) *Black and White—One Community*, Sunday, 2:00 to 2:15 p.m. A panel discussion dealing principally with problems of the Black community. Leaders of the Black community will be invited on the panel together with representatives of those white institutions concerned with the topic of discussion.

(*c*) *Morning Inspiration*, daily, 2 minutes. A message of inspiration to be broadcast each morning at sign-on.

(*d*) *Interfaith Hour*, Sunday, 11:00 a.m. Rather than broadcast a live church service at 11:00 a.m. on Sunday, it is planned to have this 30-minute program taped in advance.

(*e*) *Arts and Crafts Reports*, daily, 3:15 p.m. Special news of interest in these fields will be scheduled. Three minutes will be reserved for these reports, but more time will be made available whenever it is needed.

(*f*) *Introduction to the Symphony* and *Introduction to Opera*. Sunday, 9:05 to 9:20 a.m. This program is designed to give the listeners an introduction to these music forms, their history and theory and will include selections from well-known works.

(*g*) *Band Concerts*, Saturday, 9:30 a.m., when available. It is planned to tape selections from bands on tour and broadcast them in a 15-minute program.

(*h*) *News of Williamsburg and Suffolk*, daily, 10:30 a.m. for Williamsburg, and daily, 1:30 p.m. for Suffolk. These news periods are to be exclusively news of Williamsburg and Suffolk and surrounding areas.

(*i*) *Editorials*. Editorials of one minute or less, under the personal supervision of one of the owners, will be scheduled on appropriate subjects.

(*j*) *Sports Coverage*, daily, 7:30 a.m. and 6:00 p.m. Coverage of sports events with special emphasis on local sports events.

(*k*) *You and the Law*, Sunday, 3:05 to 3:15 p.m. This is a panel discussion show, to be produced in cooperation with members of the bar associations.

(*l*) *Navy News*, Monday, 12:15 p.m. This will be a 15-minute newscast to be produced in cooperation with the Public Information Office of the 5th Naval District.

(*m*) *Weather Reports*. Regular weather reports will be scheduled.

(*n*) *Agricultural News*. An early morning program of five minutes of news of particular interest to the rural audience will be scheduled. Also, at appropriate seasons, frost warnings will be broadcast.

(*o*) *City Council Meetings and School Board Meetings*. It is planned to have a member of the station's news staff attend these meetings and present complete reports as soon as possible on the local news broadcast.

(*p*) *Community Bulletin Board*, Monday through Saturday, 10:05 a.m. This program will feature current activities of community service organizations and news of daily events.

(*q*) *Norfolk in Action*, Sunday, 9:15 to 9:25 a.m. This program will spotlight civic or service organizations.

(*r*) *School News*, Saturday, 4:05 p.m., 10 minutes. Each school will have a school reporter appointed, to be responsible for providing the station with news of their school's activities.

(*s*) *What is STOP*, Monday, Wednesday and Friday, 10:05 a.m., 10 minutes. A question and answer type program designed to educate and inform the public about the various STOP programs and the services which are provided. It is anticipated that listeners may phone in questions which will be answered by personnel from STOP.

(*t*) *Help Wanted Column of the Air*. Saturday, 9:00 a.m. Job openings will be given, with qualifications required.

(*u*) *News*, each hour, on the hour, for five minutes. Local news will be featured, as well as news from the surrounding areas served by James River Broadcasting Corporation. In addition to national wire news service, local news will comprise approximately one-third of the total.

Additional housing needed to relieve overcrowding.
Slum eradication.
Better management of public housing.
More homes for low income and middle class families.
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Needs of elderly; more retirement and convalescent homes; meals prepared and delivered; companionship; referrals on housing and hospital care, etc.
Poverty programs.
Fewer "X" rated movies and adult book stores.
Public understanding of the problems of government and taxes; more Federal and State money for cities.
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Metropolitan government: consolidation, cooperation and consolidation of certain services.
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Busing of school children.
Intermixing of farmers and urban development.
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33. In addition to the above programs, James River proposes to treat certain needs through spot announcements. The other needs expressed by interviewees in the Norfolk urbanized area were determined by James River to be capable of fitting into the prior program proposal and *Rap '71*. As to the needs specified by the residents of the North Carolina area with less than four aural services, James River proposes to accept collect telephone calls from persons living outside Norfolk who desire to participate in *Rap '71* and, from time to time, will devote sessions of the program specifically to rural problems and problems of interest to the people living in the underserved areas. James River will also carry hunting and fishing reports in the regular news and sports program and will accept for broadcast announcements of activities and events on behalf of organizations situated in this area. James River also proposes to use local news stringers in this area. It is noted that the applicant has offered only minor changes in its programming proposal based on the 1970–1971 survey. The program, *What's the Issue*, which had been proposed as a weekly public affairs program for each Sunday, has been supplanted by the daily program, *Rap '71*, and the Sunday program, *Black and White—One Community*. The format of its other proposed programs will permit James River to meet the needs and problems it ascertained during its community survey.

Issue 4—James River's Financial Qualifications

34. This issue is limited in scope. It inquires into the cost of acquiring an antenna-transmitter site and whether, in view of such cost, James River is financially qualified. Mrs. Benns, James River's principal stockholder, has leased approximately twelve acres of land from a lumber company which owns a large tract of land at the south end of the James River Bridge. Mrs. Benns, in turn will sublease the land to James River. The lease between Mrs. Benns and the lumber company has a term of five years, and was executed on January 3, 1969. The rental for the first two years ($2,500 per year) was paid when the lease was executed. Thereafter, the rent increases to $5,000 per year. Mrs. Benns expects to be repaid by James River when the corporation is able to do so, but has not yet determined the amount of rent she will charge.

Issues 5 and 6—307 (b) and Comparative Considerations

35. A goodly portion of the findings relative to these two issues are set forth in detail in other issues herein and it is not deemed necessary to repeat them at this point in this decision. However, to make the record complete, the following findings are made respecting matters not covered elsewhere in this decision.

Williamsburg, Va.

36. Williamsburg is a city of the first class, having a city manager form of government. This is separate from James City County, which is governed by a Board of Supervisors elected from four magisterial districts. The voters of Williamsburg choose five councilmen at large, who in turn elect one of their number mayor and appoint a city manager. The council is the legislative branch and the city manager, who

serves at the pleasure of the council, is vested with the executive powers.

37. The city of Williamsburg has its own police department and its own fire department. This fire department also provides service to part of the Bruton Magisterial District in York County, and to Jamestown and Berkeley Magisterial Districts in James City County. In addition, the Williamsburg Rescue Squad provides emergency rescue and ambulance service whenever needed.

38. The educational needs of the area are served by the Williamsburg-James City County School Division, the result of a Contract Agreement for the Joint Operation of Schools, entered into by the governing bodies and school boards of the city and the county, and involves six schools. Williamsburg is also the home of the College of William and Mary, which has an enrollment of approximately 3,900 students.

39. Williamsburg Community Hospital serves the city. The religious needs of the community are served by eleven churches representing the Catholic and Protestant faiths. The local newspaper is the *Virginia Gazette*, a weekly newspaper published in Williamsburg. The city has numerous civic, fraternal, charitable, social and educational institutions, including Elks, Lions, etc. Industry in Williamsburg and James City County includes construction, manufacturing, trade and service.

Suffolk, Va.

40. Suffolk is located in and is the county seat of Nansemond County, Virginia. Each has a separate government. The county is governed by a Board of Supervisors composed of one representative elected from each of the five magisterial districts into which the county is divided. Other elected county officials are chosen by the voters of the entire county, including the towns which are politically a part of the county. Suffolk is an independent city of the first class with a city manager form of government. The electorate of the city choose five councilmen at large to serve as a city council which chooses a mayor from its own membership and appoints a city manager who serves at the pleasure of the council. The manager is given the administrative and executive powers of the government and the council retains the legislative powers.

41. Suffolk has its own police department and a full-time fire department. Nansemond County has a fire department stationed near Suffolk, and volunteer fire companies are located at Chuckatuck, Driver, Holland and Whaleyville.

42. The educational facilities of the area consist of five elementary and two high schools in Suffolk, and Frederick College in the northeast corner of Nansemond County.

43. The Louise Obici Memorial Hospital, a 200-bed facility, and its School of Nursing are located in Suffolk. Forty-three churches are provided to serve the religious needs of the area. The *Suffolk News Herald* is a daily newspaper with a weekday circulation of about 7,000. Suffolk also has numerous fraternal, charitable, civic and social institutions.

44. Suffolk is widely known as a large peanut processing center, and Planters Peanuts is its largest employer. Among the mineral resources of the area are brick clay, calcareous marl, sand and gravel. Manufacturing claims the largest percentage of the labor force in the county, followed by wholesaling, retailing and agriculture.

Norfolk, Va.

45. Norfolk is an independent city of 307,951 persons and one of the two central cities of the Norfolk-Portsmouth Urbanized Area. It has a city manager form of government with a seven-man elected council. The council supervises the general management and control of city government, chooses one of its members to be mayor, and appoints a city manager to serve at its pleasure. The city manager administers council-enacted laws through various departments of the city government whose heads report directly to him.

46. Norfolk has its own police and fire departments. The *Virginia-Pilot* is a morning newspaper published in Norfolk and the *Ledger-Star* is the evening newspaper.

47. Industry in the Norfolk area includes shipbuilding, automobile assembly, railroad repair, seafood and meat packing, wood preserving, manufacturing of food products, machinery and other metal products, chemicals, soybean, and other vegetable oils, fertilizers, beverages, apparel, furniture, textile bags, dairy products, lime and gypsum products, awnings, sails, plastics, electronics, and many other items.

48. Large enterprises of the area are the U.S. Naval Operating Base in Norfolk and the U.S. Naval Shipyard in Portsmouth. Among numerous other federal installations is the Naval Hospital in Portsmouth, opened in 1830. There are many sites of historic interest.

49. In Norfolk there are two four-year, degree-granting colleges. Old Dominion College with 7,417 enrolled in the 1965–66 session is the second largest college in Virginia. The Norfolk Division of Virginia State College has an enrollment of 3,504 in its schools of arts and sciences, education, agriculture, commerce, home economics and industries. Both colleges offer vocational and technical training.

50. There are numerous churches of Protestant denominations and several Roman Catholic and Jewish places of worship in these three cities. Most of these churches maintain Sunday schools, youth programs and many other activities.

Issue 8—Community Survey—Virginia Broadcasters and Suffolk Broadcasters

Virginia Broadcasters

51. The record shows that this applicant conducted its first survey in 1965, prior to the filing of its application. Such survey consisted of conversations with 27 Williamsburg area residents and dealt with programming needs rather than community needs.

52. Virginia Broadcasters undertook a second survey in May 1969, pursuant to counsel's suggestion that community needs and not programming be ascertained. After the issuance of the *Primer* in 1971, Virginia conducted a third survey which was reflected in a formal amendment to its application. In the 1971 survey, the principals of

Virginia recontacted those community leaders contacted in the 1969 survey. However, if these community leaders had no change from their prior testimony as to community problems, then Virginia relied on their prior statements as to community needs. Thus, the final programming survey submitted to the Commission as part of the application constituted contacts made both in 1969 and 1971.

53. The community leaders contacted in the 1969 survey and recontacted in 1971 included:

Mr. Vernon M. Geddy, Jr., vice-mayor, city of Williamsburg.
Mr. William L. Person, Jr., commonwealth attorney.
Mr. William T. Stone, judge, Williamsburg-James City County Court.
Mr. Robert Moore, assistant personnel officer, Camp Peary, Virginia.
Mr. Jack Burnish, city engineer, Williamsburg.
Mr. J. R. Zepkin, judge, Williamsburg-James City County Court.
Mr. Roy M. Aycock, Jr., information specialist, Fort Eustis, Virginia.
Mr. Harvey Walters, deputy sheriff, York County.
Commander H. Scuttle, executive director, Naval Weapons Station, Skiffs Creek.
Dr. W. Melville Jones, vice-president, College of William and Mary, Williamsburg.
Mr. Edwin A. Markoff, vice-principal, James Weldon Johnson School, Williamsburg.
Mrs. Judy Brown, principal, Jamestown Academy, Williamsburg.
Mr. Richard E. Harder, vice-chairman, York County School Board.
Dr. Henry A. Renz, superintendent, Williamsburg-James City County School System.
Mr. Claude Brown, lay leader of the Williamsburg Christian Church.
Dr. Jesse E. Bowman, pastor, Smith Memorial Baptist Church.
Mr. David W. Otey, vestryman, Bruton Parish Church.
Mr. William L. Person, director, United Virginia Bank of Williamsburg; owner of oldest Ford dealership in State.
Mr. George F. Wright, president, Williamsburg Chamber of Commerce; director of travel, Colonial Williamsburg, Inc.
Mr. Charles Brown, director of the Virginia NAACP, Lackey, Virginia.
Mr. Charles H. Forbes, III, Rawls Byrd Elementary School, PTA president and candidate for Williamsburg City Council.
Mr. Lew N. Smith, president, Williamsburg Jaycees.
Mr. Parke S. Rouse, executive director, Jamestown Festival Park.
Mr. William A. Mulineaux, bureau manager of the *Daily Press*.
Mrs. Ann H. Granger, former director of the Williamsburg Regional Library Association.

54. In preparation for the 1971 survey, Virginia's principals reviewed the census data as to population breakdown. Virginia also used the general population characteristics of the 1970 Census. Additionally, Virginia secured from the Williamsburg and James City County Chambers of Commerce a list of the various officers in organizations, and, finally, they secured references from Black leaders in the area of other leaders of the Black community. In 1971, Virginia surveyed the following community leaders:

Mr. Russell M. Corneal, area delegate to Virginia General Assembly.
Mr. Frank Force, city manager, Williamsburg.
Mr. Vernon M. Geddy, mayor of Williamsburg.
Mr. Charles H. Forbes, III, member, Williamsburg City Council.
Mr. Andrew Rutherford, chief of police, Williamsburg.
Carol Hinton, social worker, Welfare Department, Williamsburg.
Mr. Paul Hudson, recreational director, Williamsburg.
Dr. Henry A. Renz, superintendent of schools, Williamsburg-James City County.
Mr. Lawrence Walk, assistant principal, Bruton Heights Elementary School, Williamsburg.

Mr. Shade Palmer, assistant principal, Berkeley Jr. High School, Williamsburg-James City County.
Mr. Edwin Markoff, assistant principal, York High School, York County.
Mrs. Anne Miller, teacher, Bruton Heights School, Williamsburg-James City County.
Mr. William Guerrant, president, Chamber of Commerce, Williamsburg.
Mr. Waverly G. Person, director, Chamber of Commerce, Williamsburg.
Mr. Larry Trumbo, executive director, Williamsburg-James City County Community Action Association.
Mr. Val Wesson, director, Chamber of Commerce, Williamsburg.
Mr. George Weston, assistant plant manager, Anheuser-Busch Corp., Williamsburg.
Dr. Howard Ashbury, director, Eastern State Hospital, Williamsburg.
Dr. Charles S. Foley, dentist, Wiliamsburg.
Mr. Randall G. Parker, a leader of Black community, Williamsburg.
Mr. Eddie Givens, a leader of Black community, Williamsburg.

55. In addition to the community leaders, Virginia also contacted some 50 members of the general public in both Williamsburg and the entire listening area, including James City and York Counties.

56. The following is a listing of the significant suggestions concerning community needs derived from the 1969 interviews and consultations with civic leaders and members of the general public:

Attracting and keeping quality school teachers.
Information to the public on elementary and secondary school curricula.
Teen-age and parent relationships.
Channels of communication to county officials on public "gripes."
More outlets for religious news and more opportunity for religious discussion, giving differing views.
Water and sewage improvements.
Greater public awareness of the community's problems.
Help by established businesses for teen-agers.
Organizations to encourage "self-help" for deprived persons.
More monetary appropriations from the State General Assembly for the College of William and Mary.
The state's completing the southern bypass around the city of Williamsburg.
Tourists trying to see too much in too little time, creating competition between local attractions.
Inadequate recreational facilities.
Safe driving education.
Law enforcement officers having inadequate salaries.
Overlapping jurisdictions of city and the James City County governmental agencies.
The inability of city and county governments to work together harmoniously.
Planning and maintaining the appeal of the Williamsburg area.
The need for more industrial schools.
Monticello Avenue extension to bypass the Williamsburg Shopping Center.
Route 60 access to Jamestown Academy.
Need for an adequate library in Williamsburg.
Better employment opportunities and improved wage scales in the area.
Familiarization between racial groups and income groups in the area of the other person's problems.

57. The following are the significant suggestions concerning community needs derived by Virginia from 1971 interviews and consultations from civic leaders and members of the listening public:

The impact of the installation of a large Anheuser-Busch brewery in Williamsburg.
The development of the Kingsmill Tract in which Anheuser-Busch brewery is to build residences for some 3,000 in a planned community.

Traffic congestion anticipated as a result of these expansions.
Reorganization of the governmental stature to meet the largely increasing population.
Better communication between the parents and the school systems.
The need for sewage and water as a result of the rapidly expanding population.
Present housing shortage.
Lack of recreational facilities.
Truancy.
Lack of jobs for senior citizens.
Expansion of the area hospitals.
Expansion of the school system to meet new population.

58. Programs devised by Virginia to serve the needs of the area ascertained in the surveys are as follows:

(*a*) *Town Topics*, Saturday and Sunday mornings. This discussion program will generally cover the area problems previously detailed. The problems will then further be discussed in a continuing fashion throughout the broadcast week in *Minute Mandates*. The program will lay stress on current community needs, such as a blood shortage, to give greater public awareness of community problems.

(*b*) *Minute Mandates*, interspersed throughout the broadcast day and the broadcast week. These will be one- or two-minute interviews with community leaders on particular topics, such as extension of the water and sewage system, etc.

(*c*) *Town Crier*, weekly, one hour, will allow community leaders to discuss local problems with the public calling in to raise related questions to these leaders.

(*d*) In the morning, about 8:00 a.m., a two-minute *coverage of the grammar school and high school*, including the school lunches and a short analysis of school activities to inspire parents to keep their children in the school will be broadcast. Truancy and the need for communication between parents and the school system were problems in both the 1969 and 1971 surveys.

(*e*) A *community calendar* of about two-minute duration will be broadcast somewhere between 9:00 and 9:30 a.m., covering the important events of the day. This will meet the need found to encourage people to participate in community activities.

(*f*) Twice a day the station will broadcast an *editorial* in which it will state its position on the current area problems that it is covering.

(*g*) During the early morning hours when programming of *entertainment specifically addressed to women* is being broadcast, the short features will cover the activities of the area women's clubs and garden clubs.

(*h*) Twice a day a brief two-minute *religious message* will be given.

(*i*) *Think Williamsburg*, twice a day, a vignette, will be given, in which there will be two-minute interviews with leading citizens of the area to encourage people to take an active interest in the problems of the community.

(*j*) *A daily report* will be broadcast rotating about the various military posts in the area, e.g., Fort Eustis, the Naval Weapons Station, Camp Peary, etc., in which taped interviews of approximately two minutes duration on the most pressing problems on the post (such as housing) and post activities.

(*k*) In the early afternoon, Virginia will present *Town and Gown* in which the activities of William and Mary, the philosophies of its students and faculty, the social and educational interests of the college will be covered by interviews.

(*l*) Also in the afternoon, the special features will cover an interplay between the representatives of the various PTAs and the school board, carrying both sides of various questions concerning *education in the schools*.

(*m*) In the later afternoon, the station will present a weekly *Platter Princess* who will conduct interviews with high school leaders discussing their problems.

(*n*) *Coverage of a rotating civic club project*, daily, for example, the Jaycees' Bloodmobile Drive, will be broadcast.

59. In addition to the discussion and the *Minute Mandate* programs, of the type covered above, Virginia will have a regular *Bulletin Board* feature to publicize the activities of various community organizations.

Sunday mornings, Virginia will cover not only religious news but also the services of varying church groups, with large and small denominations. Virginia also proposes a three-minute newscast every hour, and two minutes every half-hour, with particular emphasis placed on local news. These news broadcasts will be at a time other than that of the other stations in the area in order to cover the news at "in-between" times. Additionally, there will be extensive coverage of local news at 7:00 and 8:00 a.m.

60. Virginia has only added one program, i.e., *Town Crier* to its proposed programming as a result of its community surveys. However, it has altered the format and content of its original proposal so as to meet the needs and problems of the community.

Suffolk Broadcasters

61. Like the other two applicants, Suffolk conducted a survey of the area in 1966 prior to the filing of its application. Such survey consisted of interviewing about 70 persons, but related only to programming needs and not community problems and needs.

62. A subsequent survey was conducted by Suffolk in December of 1968, and February of 1969, employing the services of both Robert E. Pickett, Jr., then an employee of Mrs. Springer's station, WEEW radio in Washington, North Carolina, and Mrs. Springer herself. The persons surveyed in December 1968 and February 1969 were as follows:

Mr. Robert Ralph, executive director, Suffolk Chamber of Commerce.
Mrs. Margaret Palmer, Suffolk librarian.
Mr. J. C. Causey, city manager, Suffolk.
Mr. Jesse A. Hassell, police chief, Suffolk.
Mr. Rufus A. Baines, Sr., chief, Suffolk Fire Department.
Mr. Louis F. Owens, chief, Suffolk Probation Department.
Mrs. Mary V. Turner, superintendent, Suffolk Welfare Department.
Miss Ella Rice, Nansemond County home demonstration agent.
Mr. Harry L. Cross, Jr., Suffolk city commissioner.
Mr. James F. Hope, mayor, Suffolk.
Mr. William R. Savage, superintendent, Suffolk schools.
Mr. Calvin Davis, principal, Glenn Forest High School.
Reverend Robert Bennett, pastor, Berea Christian Church.
Reverend Donald J. Dunlap, pastor, West End Baptist Church.
Reverend John Robert Vann, pastor, St. Mary's Catholic Church.
Mr. W. H. Boone, principal, John F. Kennedy High School.
Mr. J. Ralph Hobbs, Suffolk Rescue Squad.
Mr. Angus Hines, Suffolk Rotary Club.
Lieutenant Davis, Suffolk Salvation Army.
Mr. Joseph B. Irvin, Suffolk Boy Scouts.

63. The needs found by Suffolk as a result of the foregoing survey were as follows:

Annexation.
Traffic flow.
Dissemination of accurate information of the city council's work.
School classroom expansion.
Need for a vocational training school.
Support for school activities.
Need for information on the all-Negro school—its problems and activities.
Need for youth recreational program.
Need for a local little league baseball club.

Retrieving overdue library books.
Salvation Army fund drive to expand its building.
Need for education and information on consumer affairs.
Need for an industrial park.

64. After the Commission released its *Primer* in February 1971, Mrs. Springer undertook another survey of community needs and problems. She made an effort to consult with members of a representative range of groups and residents in the suffolk area. In such consultations, Mrs. Springer took into consideration the fact that the Suffolk Chamber of Commerce had estimated that about 40% of Suffolk residents and approximately 54% of Nansemond County residents are Negroes, while approximately 25% of Suffolk residents and 44% of Nansemond County residents have an annual income of less than $3,000, and thus she attempted to interview numerous Blacks and also persons receiving and administering welfare. Because of difficulty in trying to interview Negroes, Mrs. Springer enlisted the aid of Mrs. Annie Gilbert, a Colored woman who had been in her employment about nine years, to conduct interviews with a number of Blacks in Suffolk.

65. The persons contacted by Mrs. Springer and Mrs. Gilbert during this 1971 survey were as follows:

Reverend D. Berg, pastor, First Baptist Church.
Mrs. Mary Virginia Turner, superintendent, Welfare Department.
Mr. W. H. Boone, principal, John F. Kennedy High School, Nansemond County.
Dr. Robert B. Marr, pastor, Suffolk Christian Church.
Mr. Jesse Harrell, chief, Suffolk Police.
Mr. C. M. Moyer, Jr., assistant city manager.
Mr. T. R. Jones, manager, Employment Security Commission.
Patsy Burnes, assistant director, Birdsong Recreation Center.
Monette Starkey, assistant director, Chamber of Commerce.
Reverend Donald J. Dunlap, pastor, Main St. Methodist Church.
Mr. Jesse Trent, social service worker.
Mr. Kenneth H. Pretlowe, supervisor, STOP Program.
Mr. Melvin J. Blowe, manager, Croacker Funeral Home.
Mr. Lack Parker, regional director, Local 26, National Council of Distributive Workers.
Mr. Pomp Kelby, president, Preachers Association.
Mrs. Frances Williams, bookkeeper; member of PTA.
Mrs. Edna Butler, welfare recipient.
Mr. Arnold Anderson, founder of Boy's Club.
Miss Marion Porter, saleslady and teen-ager.
Mrs. Shirley Joyner, sales clerk; member of PTA.

66. Based on Mrs. Springer's and Mrs. Gilbert's survey, Suffolk determined the following needs from community leaders:

Race relations.
Drug abuse and alcoholism.
Lack of recreational facilities for the elderly as well as for youth.
Air and water pollution.
Lack of adequate housing.
Friction between the county and city governments.
Correction of the court system.
Annexation.
Improvement of the school systems.
Unemployment.
Youth opportunity.
Large welfare programs.
Local religious services.

67. Additionally, Mrs. Springer contacted some 55 persons who resided in Suffolk, Holland, Chuckatuck and Whaleyville in her general public survey. Such persons were selected at random from telephone directories, and the results demonstrated that their main concern was the need for more recreational activities, youth opportunities and better housing. The results of such general public survey are tabulated as follows:

Recreation	28
(Some mentioned recreation for the elderly, some for youth, some specified church-sponsored for "Christian" recreation program.)	
Youth opportunities	16
Better housing	13
(This includes rental housing as well as property for sale.)	
Vocational	8
(Includes responses for vocational *training* and vocational *opportunities.*)	
Pollution	9
(Includes those who desire water and drainage systems.)	
Drug usage	7
Cultural opportunities	4
Traffic problems	4
(All responses in this category were specifically pertaining to the trains that tie up traffic for long periods of time in downtown Suffolk.)	
Race relations	3
Job opportunities	3
Law enforcement	3
(Two said stricter law enforcement was needed, one said the courts were too lenient.)	
Welfare	3
(All three mentioned *additional* welfare assistance.)	
Educational services	2
(Indicated more were needed.)	
Municipal services	2
(Could be improved and expanded.)	
Equal opportunity	2
Clean-up campaign	2
Bring new industry to the area	1
Help aliens to learn English	1
Soaring crime rate	1
Taxation	1
Alcoholism	1
More police protection	1
Greater support for churches	1

68. Suffolk has devised the following programs to serve the needs of the area ascertained in its surveys:

(*a*) *Community Panel,* Sunday, 1–1:30 p.m. This program is designed to bridge the communication gap by providing a forum to the Suffolk area on various community problems. The format will primarily be panels and discussions with community leaders, educators, city and county officials, and interested citizens participating. Illustrative of the types of problems to be discussed are: the lack of recreational facilities in Suffolk and Nansemond for the elderly and youth in general, particularly Negro youth; the need for more effective pollution control in the area; the potential for drug abuse in the area; the lack of vocational opportunities for youth, particularly Negro youth; whether law enforcement is evenhanded in its administration in Suffolk and Nansemond Counties: lack of cultural facilities in the area; and the question of whether annexation by Suffolk of parts of Nansemond County is desirable.

(*b*) *Questions and Answers,* Monday through Friday, 10:30–10:35 a.m. This program will involve telephone and studio participation with a guest answering questions and commenting on matters in his particular area of expertise.

It is anticipated that persons with knowledge of the problems set forth above will be guests on this program.

(*c*) *Seminar*, Saturday, 1–1:15 p.m. Designed to appeal to teen-agers, it will provide an outlet for them to discuss their interests, problems and activities.

(*d*) *Community Billboard*, Monday through Friday, 11:30–11:35 a.m. This program will describe local civic events, planned and proposed, including activities of various civic organizations.

(*e*) *City Council*, first Monday following the Council meeting, 1:00–1:15 p.m. Taped highlights of the Council meeting will be broadcast.

(*f*) *Pete's Progress*, Monday, 9:15–9:30 a.m. A weekly information report from the U.S. Chamber of Commerce or the local Chamber of Commerce which will serve as a source of information to the business community.

(*g*) *Success Story*, Tuesday, 9:15–9:30 a.m. This program will be a series of presentations involving men from various occupations who will explain the nature of their work, the advantages and disadvantages of their respective vocations.

(*h*) *For Men Only*, Saturday, 9:15–9:25 a.m. This program will include special features on such subjects as sports, fishing, hunting, stock market, business news and agriculture, and other subjects of particular interest to men.

(*i*) *For Women Only*, Wednesday, 9:15–9:25 a.m. This program will parallel *For Men Only*, except it will cover topics of particular interest to women. For example, Handy Hints, School Menus, Ask Your Neighbor.

(*j*) *Daily Devotional*, Monday through Saturday, 9–9:15 a.m. A devotional program under the auspices of the Ministerial Association which will permit local ministers and priests to speak on a rotating basis.

(*k*) *The City Manager*, Tuesday, 1–1:15 p.m. This program will feature the city manager and is designed to promote the objective of better city government by giving it a vehicle to report to the residents of Suffolk. Hopefully, this will bring about better understanding of the city government by its residents.

(*l*) *Know Your Policemen and Know Your Firemen*, Thursday, 9:15–9:30 a.m. This program will present profiles of individual members of both departments. Its purpose is to acquaint the public with their public servants in an effort to promote and encourage better relations between the community and policemen and firemen.

(*m*) *Welfare Department Spotlight*, Monday, 11:45–12 noon. This series is designed to acquaint the community with the overall services provided by the Welfare Department and to explain some of the many facets of the Welfare Department's program, including Medicare and Medicaid.

(*n*) *Teen-age Corner*, Saturday, 11:30–11:45 a.m. This program will provide news of interest to teenagers. It will primarily consist of school news as reported by pupils.

(*o*) *Parole Officers Report*, Friday, 9:15–9:30 a.m. This program will consist of a series based on the problems of parolees and probationers.

69. Suffolk proposes to broadcast 5½ hours of news weekly. Approximately 30% of the news will be local and will give exposure to many of the problems and needs discussed above. Farm market reports and information will be disseminated in the news. Suffolk Broadcasters also proposes to broadcast many noncommercial short announcements of the "brotherhood" type. This type of announcement, in the applicant's judgment, needs to be broadcast repeatedly, utilizing the thesis that repetition is the basis of learning. It is believed that the subject of race relations lends itself particularly well to short spot announcements. A similar approach will be utilized in dealing with the problem of pollution. It is proposed to broadcast schedules of short noncommercial spot announcements on many phases of pollution emphasizing those aspects of the problem that individuals in their personal lives can address. For example, purchasing nonphosphate detergents and returnable bottles. Suffolk Broadcasters states that it is concerned with the entire ecology spectrum, and it proposes to utilize schedules of short announcements citing the dangers of pesticides, and

to demonstrate that forest fires also pollute the air, damage watersheds and kill wildlife.

70. While Suffolk has not changed the titles of its programs from those proposed in various amendments to its application, it has altered the form and content of such programs in order to accommodate the community problems and needs that were discovered as a result of its community surveys.

Issue 9—Financial Qualifications of Suffolk Broadcasters

71. The financial issue directed toward Suffolk Broadcasters inquires into whether Rosa Mae Springer will be able to meet her obligations to the applicant. Suffolk Broadcasters will require $81,373 to construct the proposed station and operate it for one year. Mrs. Springer submitted a balance sheet reflecting her financial status as of July 1, 1969. The balance sheet shows that Mrs. Springer has cash on hand or in the bank (checking account and savings certificate) totalling $75,000. Based upon closing prices on July 1, 1969, Mrs. Springer owns listed securities valued at $19,975. Therefore, Mrs. Springer may be credited with having $94,975 in cash and listed securities. Mrs. Springer has current liabilities of $5,000 which leaves $89,975 available for construction and operating the proposed station. An examination of current market prices indicates that Mrs. Springer's securities have declined in value. Mrs. Springer owns convertible debentures which have not been mentioned, but which are available and more than offset the decline in the value of the listed securities.

Issue 10—Rule 1.65 Issue

72. Rule 1.65 requires an applicant to amend its application within 30 days when the information contained therein is no longer substantially accurate and complete in all significant respects. In specifying the Section 1.65 issue, the Review Board noted that an application was filed with the Commission on October 8, 1968, requesting approval of Mrs. Springer's acquisition of a controlling stock interest in Station WEEW, Washington, North Carolina. The agreement submitted with the application was dated September 11, 1968. The Board's Memorandum Opinion and Order reflects that an amendment to the Suffolk application concerning the WEEW transaction was not submitted until December 17, 1968. The petition to enlarge seeking the 1.65 issue had been filed on December 2, 1968. Concluding that Mrs. Springer's monetary obligation to Station WEEW could potentially affect Suffolk Broadcasters' financial qualifications, the Board deemed the applicant's failure to inform the Commission of the transactions to be significant and added the 1.65 issue for comparative and requisite qualification purposes.

73. The record reveals that Mrs. Springer owned 49.7% of the issued stock in WEEW, Inc., the corporate licensee of Station WEEW in Washington, North Carolina. She inherited her interest in WEEW, Inc. from her husband who passed away in June 1967. The September 11, 1968 agreement was between WEEW, Inc. and stockholder John P. Gallagher. It provided that the corporation would purchase Gallagher's stock. Gallagher's stock would become treasury stock and Mrs. Springer would then own 99% of the issued and outstanding stock of WEEW, Inc.

74. FCC Form 316 (short form) was filed with the Commission on October 8, 1968, seeking approval of the Gallagher transaction. The agreement was appended to the Form 316. By letter dated October 23, 1968, the Commission informed WEEW, Inc. that the short form could not be used and a Form 315 (long form) would have to be filed. The long form was ultimately filed on February 19, 1969.

75. The WEEW, Inc.-Gallagher agreement provided that Gallagher would be paid $10,000 for his stock, but of that amount only $2,000 would be due on closing. The balance of $8,000 would be paid at the rate of $500 per quarter. WEEW, Inc. had the $2,000 needed for payment to Gallagher on closing.

76. Mrs. Springer admitted that she probably never would have amended Suffolk Broadcasters' application to reflect the WEEW, Inc. transaction if it were not for the filing of the petition to enlarge which requested the Rule 1.65 issue. She was completely unaware that she was required to report the corporate transactions of WEEW, Inc. in a proceeding in which she was an individual applicant. She did not know that the WEEW, Inc. proposed transfer affected her status as an individual. Mrs. Springer did not know that she was obligated to keep her application current until after the petition to enlarge was filed. She disclaims any intent to withhold information from the Commission, noting that she had, in fact, filed the transfer forms with the Commission, although not in conjunction with this proceeding.

Issues 11, 12 and 13—James River's MEOVs, and Interference to KFAB

77. These issues relate to James River's directional antenna, its adjustment and maintenance. The designation order specified a maximum radiation toward KFAB, Omaha, Nebraska. However, subsequent to designation for hearing, the James River application was amended to specify new maximum expected operating values of radiation for the proposed directional antenna. In view of the amendment, the condition specified in the designation order limiting radiation to essentially 477.9 mv/m in the direction 291.5 degrees true is now moot.

78. James River's proposed directional antenna will consist of four uniform cross-section guyed towers spaced 100 degrees (electrical) on a line bearing 315 degrees true. Each of the towers will have a height of 220 feet or 89.3 degrees (electrical). The phasing and sampling systems will be designed by Multronics, Inc. The phasing system will utilize vacuum capacitors throughout. A rigid sampling loop will be connected to the phase monitor by a temperature stable sampling line such as one-fourth inch air dielectric Heliax. Both the sampling and transmission lines will be buried. A Potomac Instruments precision phase monitor (Type PMA-19) will be installed to accurately monitor the phase and current relationships in the antenna system.

79. The following table sets forth the allowable critical hours skywave radiation toward the service area of Class I Station KFAB in Omaha, Nebraska, and the maximum expected operating values (MEOVs) of radiation specified by James River. The table shows that in each instance the limits of the proposed critical hours radiations as defined by the MEOVs are less than the allowable radiations toward KFAB. Accordingly, operation by the proposed station within

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these limitations would afford the Omaha station the protection contemplated by Section 73.187 of the Rules. Adequate protection would also be afforded Station WBT, Charlotte, North Carolina, the other Class I station on the frequency.

Point	Azimuth (degrees)	Distance (miles)	Vertical arc (degrees)	Radiation	
				Allowable (mv/m)	MEOV (mv/m)
1	304.3	1062	0-3.87	902.6	720
2	304.0	1002	0-4.57	886.3	715
3	302.8	985	0-4.75	882.0	700
4	301.8	949.4	0-5.16	751.2	685
5	300.4	916.6	0-5.63	690.4	665
6	298.7	887	0-6.00	644.9	635
7	296.9	871	0-6.23	615.8	610
8	294.1	841	0-6.68	570.6	565
9	289.4	843	0-6.66	557.3	515
10	285.7	863	0-6.36	566.8	440
11	282.5	894	0-5.89	593.2	385
12	280.3	936	0-5.36	637.2	345
13	278.2	1005	0-4.52	725.7	305
14	277.2	1071	0-3.63	836.2	295

80. With the directional antenna initially adjusted to obtain the calculated pattern values of radiation, the most adverse combination of parameter variations of as much as 1% in field ratio and 1 degree in relative phase would not produce radiations in excess of the specified MEOV. In the direction 291.5 degrees true toward KFAB, the initial adjustment radiation would increase from 477.9 mv/m to 520 mv/m, a value well within the MEOV of 538 mv/m. The permissible critical hours radiation on this bearing toward KFAB is 548 mv/m or 10 mv/m greater than the MEOV. In the opinion of James River's two engineering consultants, the proposed directional antenna system is electrically stable and can be adjusted and maintained to hold radiation within the specified MEOV.

81. James River and KFAB have mutually agreed that a grant of the James River application subject to the following conditions which are acceptable to James River would adequately protect KFAB:

"1. Two M–P bearings would be specified toward Station KFAB. One at N 278° E and the other at N 304° E.

"2. The array would be initially adjusted as close as possible to the calculated values of radiation over an arc from N 263° E through N 304° E. Monitoring points would be established on the specified radials toward KFAB and the DA–D to NDA ratio at each of these two monitoring points would be checked weekly for one year, to obtain data on the seasonal variations in conductivity. A maximum tolerance on the monitoring points would be established by multiplying the MP reading by the MEOV divided by the adjusted value of radiation on each bearing.

"3. The current and phase relationships would be utilized as a 'flag' indicator. At any time during critical hours that any one of the phases deviated by more than 1° or any one of the current ratios by more than 1%, the monitoring points would be checked to insure that the MP tolerances toward KFAB had not been exceeded.

"If at any time the MP readings in the direction of KFAB are found to be out of tolerance, immediate steps will be taken to reduce the radiation to the limits specified for the MP.

"4. KFAB will be given the opportunity to have an engineering representative present at the time the unused towers have been isolated for the purpose of making nondirectional measurements and during the taking of final directional and nondirectional measurements on the two radials toward KFAB. Close-in non-

directional measurements will be taken on these two radials (toward KFAB) up to the outer boundary of the ground system."

The record shows that James River will comply with its agreement with KFAB provided that such compliance would not be contrary to any conditions specified in its construction permit.

Ultimate Findings and Conclusions

1. These three mutually exclusive applications propose a new Class II station to operate daytime only on 1110 kHz. The applications of Virginia Broadcasters and Suffolk Broadcasters for facilities, respectively, in Williamsburg and Suffolk, Virginia, each request operation with a power of 250 watts nondirectional. The third application, that of James River Broadcasting Corporation, proposes operation in Norfolk, Virginia, with a power of 50 kilowatts, directionalized. Williamsburg, Suffolk and Norfolk are all classified as independent cities and are located in the southeast sector of the state. With respect to Norfolk, Williamsburg is located 40 miles to the northwest and Suffolk is 20 miles to the southwest. Williamsburg is 38 miles north of Suffolk. Neither Williamsburg nor Suffolk is part of an urbanized area.

2. Inasmuch as basic qualification issues were specified against all three applicants, it is necessary to resolve those issues prior to any further consideration of the applications.

Financial Qualification

Virginia Broadcasters (Issue 2)

3. To be deemed financially qualified, Virginia Broadcasters must establish that it can meet its estimated $60,580 cost of construction and operation. At the outset, the applicant's obligation can be reduced by $10,000 which represents the cost of a transmitter site. A principal of Virginia Broadcasters owns the property proposed as the transmitter site and has agreed to make it available to the applicant at no cost during the first year of operation.

4. Thus, Virginia Broadcasters' expense has been reduced to $50,580. Gilbert Granger, a Virginia Broadcasters principal, and his wife have agreed to loan the applicant sufficient funds to construct and operate the station. It has been found that the Grangers have $7,230 in unencumbered liquid assets over their current liabilities. Granger, through a wholly-owned corporation, owns a 100′ by 125′ lot in Williamsburg. Granger proposes to sell or mortgage this property in order to raise the additional funds which he needs to meet his commitment to the applicant. The property includes a three-story brick building and was purchased in 1964 for $27,500. A local real estate broker has appraised the property, which is unencumbered, to have a current market value of $58,000.

5. It is concluded that the Grangers will be able to furnish the applicant with the $50,580 which it needs to construct and operate, for one year, the proposed Williamsburg facility. Therefore, it is concluded that Virginia Broadcasters has met its burden under this issue and is financially qualified.

Suffolk Broadcasters (Issue 9)

6. Suffolk Broadcasters must establish that it has $81,373 available to construct and operate, for one year, its proposed AM station in Suffolk, Virginia. Suffolk relies upon the resources of its principal, Rosa Mae Springer, who has liquid assets (cash and securities) in excess of $89,975 over current liabilities. It is, therefore, concluded that Suffolk Broadcasters is financially qualified.

James River Broadcasting Corp. (Issue 4)

7. The financial qualifications of James River are subject to inquiry only to the extent that the applicant was required to indicate what it would cost to acquire a site for its antenna and that it could meet the additional expense. One of its principals has leased a suitable site. She has agreed to make it available to the applicant on a sublease basis and will not require repayment by James River until the applicant is financially able to expend the funds. Consequently, it is concluded that James River is financially qualified.

Rule 1.65 Issue—Suffolk Broadcasters (Issue 10)

8. The record reveals that Mrs. Springer failed to amend the Suffolk Broadcasters application to reflect that an agreement had been entered into and submitted to the Commission for approval whereby she would become owner of 99% of the issued and outstanding stock of WEEW, Inc., licensee of Station WEEW, Washington, North Carolina. At the time of the agreement, Mrs. Springer had a 49.7% interest in the corporation. The findings show that the proposed transfer would not have altered Mrs. Springer's ability to finance the Suffolk application. Only $2,000 was to be paid to the withdrawing stockholder on closing and this money was to be paid by WEEW, Inc. The interest of the withdrawing stockholder was to be retired as treasury stock.

9. Certainly the Suffolk Broadcasters application should have been amended to reflect that Mrs. Springer was becoming the controlling owner of WEEW. The application form requires applicants to report their present and past broadcast interests as well as any other applications that are pending. Mrs. Springer should have kept the Suffolk application current. However, it does not appear that Mrs. Springer intended to withhold information which would have adversely affected her qualifications as an applicant in Suffolk. The facts do not warrant concluding that Mrs. Springer is disqualified, nor is it necessary to impose more than a minor comparative demerit under these circumstances.

James River's Directional Antenna (Issues 11, 12, and 13)

10. The findings establish that James River's proposed directional antenna is stable and can be adjusted and maintained so that radiation will not exceed the specified maximum expected operating values. Moreover, the critical hour radiations will not exceed the values permissible under Section 73.187 of the Rules, and adequate protection will be afforded Station KFAB in Omaha, Nebraska. For the purpose of monitoring the electrical parameters of the directional antenna, James River proposes the installation of a Potomac Instruments Type PMA–19 precision phase monitor.

11. The condition in the Commission's designation order limiting radiation from the James River directional antenna to 477.9 mv/m in the direction 291.5 degrees true is no longer pertinent in view of the subsequent amendment of the application to specify new maximum expected operating values of radiation which will afford protection to all stations on the channel. A second condition in the designation order concerning presunrise operation in the event of a grant of the James River application is rendered moot by recent amendments to Sections 73.87 and 73.99 of the Rules.

12. In the light of the foregoing two paragraphs, it would be appropriate to specify the four conditions which are of a standard type for AM stations employing directional antennas, and which would be sufficient to afford KFAB the requisite protection not only during critical hours but all other hours, in the event of a grant of the James River application.

Community Survey Issues

13. The findings show that each of the three applicants has conducted surveys of their service areas, beginning in 1965 and 1966. While such initial surveys related solely to programming, the contacts that were made served to acquaint the applicants with the community leaders in the respective service areas. Subsequent surveys further acquainted the applicants with the areas and the leaders, although some of the interviews related to programming. All of the applicants conducted surveys of the various service areas after the Commission's releases came out relative to community problems or needs, and particularly its *Primer* of February 1971.

Virginia Broadcasters (Issue 8)

14. Virginia conducted surveys in May 1969, and after issuance of the *Primer* in 1971. Williamsburg is the only urban area in the 2 mv/m contour and most of the community leaders interviewed were from there. However, York County and James City County leaders were among those contacted. 1970 Census data, as well as data from Williamsburg and James City County Chambers of Commerce were used in formulating the list of those to be interviewed. The general public survey included Williamsburg and the entire listening area, including York and James City Counties. The suggested problems and needs derived from these surveys were evaluated and the applicant altered the format and content of its proposed programming to take care of such needs. Virginia did not specify the exact time of each program but in most cases the duration was specified, and the approximate time of broadcast was given. A review of the findings leads to the conclusion that Virginia has, at the least, minimally satisfied the community survey issue.

Suffolk Broadcasters (Issue 8)

15. Suffolk conducted surveys in December 1968 and February 1969, as well as subsequent to the release of the *Primer* in February 1971. Because of the large percentage of Negroes in Suffolk and Nansemond County and the reluctance of such persons to talk to her, Mrs. Springer enlisted the aid of a Colored woman to interview Black leaders. The problems and needs elicited from the community leader survey, as

well as the needs suggested by the persons surveyed in Suffolk, Holland, Chuckatuck and Whaleyville during the general public survey, were assembled and evaluated. After such evaluation, the format and content of the proposed programming were altered so as to accommodate the problems and needs of the area. The duration, time and problems to be covered by each program have been detailed. Upon the basis of the findings set forth hereinbefore, it is concluded that Suffolk Broadcasters has sustained its burden of proof with respect to the community survey issue.

James River Broadcasting Corp. (*Issue 3*)

16. After being notified of the Commission's requirements concerning community problems and needs, James River conducted a telephone survey of several community leaders in Norfolk, Suffolk, Williamsburg and Virginia Beach during May 1969. Other surveys of community leaders and the general public were also taken during 1970 and 1971. A mail survey was undertaken in February 1970, but was not too successful since only 21 replies were received from 173 questionnaires mailed out. However, personal interviews and telephone inquiries in early 1970 and 1971 resulted in many suggested problems and needs from community leaders and the general public. This applicant proposes to concentrate on serving the Norfolk urbanized area, Suffolk, Williamsburg and the underserved areas of North Carolina. It has elected not to specifically serve Newport News and Hampton, Virginia, although both cities lie within its proposed 2 mv/m contour, for the reason that they are separated from Norfolk by a toll tunnel and are already served by several stations. After receipt and evaluation of the suggested needs and problems, James River dropped one proposed weekly public affairs program, i.e., *What's the Issue*, and added a daily program, *Rap '71*, and a Sunday program, *Black and White—One Community*, to meet many of the disclosed needs. It also changed the content of its other proposed programs so as to meet the needs and problems it had ascertained during its surveys. The findings disclose that James River has adequately satisfied the community survey issue, and it is so concluded.

17. The disqualifying issues having been disposed of hereinbefore, and no applicant having been found disqualified, it is now appropriate to give consideration to the other issues.

The 307(b) Issue (*Issue 5*)

Virginia Broadcasters

18. Between 1960 and 1970, Williamsburg's population increased 32.7% to 9,069. Williamsburg has one AM station (WBCI), one commercial FM station (WBCI–FM) (both licensed to the same licensee), and one low-powered (10 watts) educational station. Virginia Broadcasters' proposed new station will serve 44,960 persons in a 725-square mile area, all in Virginia. Apart from providing a second AM service to Williamsburg, the proposed station will not serve Suffolk, Norfolk or any other urban area. In the rural areas to be served by the proposed station, other AM service is available in any one part from 3 to more than 10 stations. The areas receiving 3 and 4 AM services include 458

persons in 25.4 square miles and 1,497 persons in 68.4 square miles, respectively. Taking into account available FM services, no portion of Virginia Broadcasters' proposed service area receives less than 5 aural services (AM plus FM). Williamsburg is served not only by its local AM (WBCI) and FM (WBCI–FM) stations but also by five other FM stations.

Suffolk Broadcasters

19. Suffolk, a city of 9,858 persons (a decrease of 21.8% since 1960), has one AM station (WLPM) and one FM station (WXYW), both licensed to the same licensee. Operating as proposed, Suffolk Broadcasters' proposed station will provide a new service to 83,125 persons in a 1,220-square mile area, a small portion of which falls in the adjacent state of North Carolina to the south. AM service in any one part of the rural area is received from 6 to 10 stations. Apart from Suffolk, the proposed station will serve small portions of Chesapeake and Portsmouth, Virginia, each of which receives at least 5 AM services. Besides being served by the local AM (WLPM) and FM (WXYW) stations, Suffolk is the recipient of five other AM services and seven other FM services.

James River Broadcasting Corp.

20. Norfolk is a city of 307,951 persons (an increase of 1% since 1960), and one of the central cities of the Norfolk-Portsmouth Urbanized Area (population 668,259) and of the Norfolk-Portsmouth Standard Metropolitan Statistical Area (population 680,600). Broadcast authorizations in Norfolk include 4 AM, 7 FM and 3 TV (one educational) stations. James River Broadcasting Corporaton's proposed station will serve 963,351 persons in an area of 4,840 square miles, including 89% of the population proposed to be served by Virginia Broadcasters and 93% of the population proposed to be served by Suffolk Broadcasters. The proposed station will also serve Williamsburg and Suffolk. It provides Williamsburg with a second AM service and Elizabeth City, North Carolina, with a third. From one to ten AM stations serve different portions of the rural area. That portion of the rural area receiving only one AM service includes 1,363 persons in approximately 245 square miles. This is a swampy area located 5 to 25 miles south of Albermarle Sound and about 70 to 90 miles south of Norfolk. The rural area receiving two AM services includes 1,059 persons in approximately 160 square miles near the single service area, except for an area of 12 square miles containing 121 persons located 48 miles northwest of Norfolk. The rural area receiving three AM services includes 5,703 persons in 263 square miles, and that receiving four such services includes 3,725 persons in 167 square miles. Consideration of FM services does not alter the rural "one service" area but does reduce the rural "two service" area to 938 persons in 151 square miles. The proposed station represents a fourth aural (AM plus FM) service to Elizabeth City, North Carolina (population 14,062), which now receives two AM services and one FM service, and to a part of the above 5,703 persons. It provides a fifth aural service to 2,077 persons.

21. While the three applicants presented 1970 population data respecting their cities of application, they did not relate 1970 Census data to population within their coverage areas. Consequently, for pur-

poses of comparison of some of the pertinent details with respect to them it is necessary to use 1960 Census data information in the following table:

	Virginia	Suffolk	James River
Applicant's community	6,832 persons	12,609 persons	304,869 persons.
Local facilities [1]	1 AM; 1 FM	1 AM; 1 FM	4 AM; 7 FM; 2 TV.
Daytime coverage	44,960 persons	83,125 persons	963,351 persons.
Applicant's community receives	1 AM; 6 FM	6 AM; 8 FM	12 AM; 10 FM.
1 AM service	6,832 persons [2]		8,195 persons.[2]
2 AM services			15,121 persons.[3]
3 AM services	458 persons		5,703 persons.
4 AM services	1,497 persons		3,725 persons.
1 aural service			1,363 persons.
2 aural services			938 persons.
3 aural services			18,515 persons.[3]
4 aural services			2,077 persons.

[1] Commercial broadcast stations.
[2] Includes Williamsburg with a population of 6,832.
[3] Includes Elizabeth City, North Carolina (population 14,062).

22. In making the ultimate 307(b) choice, as between the three mutually exclusive proposals in this proceeding, consideration must be given to two decisional criteria; namely, the need for a local broadcast outlet and/or the need for a reception service. The facts, as outlined above, establish that Williamsburg and Suffolk each have a local AM and FM station, whereas Norfolk has four AM and seven FM stations. A fair and equitable distribution of local outlets would dictate that there is a greater need for an additional competitive outlet in Williamsburg and Suffolk than there is for a twelfth aural outlet in Norfolk. However, since Suffolk has experienced a decrease in its population of 21.8% from 1960–1970, it is evident that Suffolk's need for an additional competitive outlet is not as great as that of Williamsburg which has experienced a 32.7% increase in its population during the same period of time. Therefore, were the need for a local outlet the only decisional factor, Williamsburg would be preferred.

23. In this proceeding the second decisional factor, namely, the need for a reception service, must be given consideration. The Norfolk proposal has all the characteristics of having maximum efficiency in that it would bring an additional aural service to a much larger population and area than either the Williamsburg or Suffolk proposals. This fact, standing alone, however, does not have decisional significance, and consideration must be given to the need for an additional reception service from all three proposals. As detailed, *supra*, the Norfolk proposal would bring a second aural service to 1,363 persons and a third and fourth aural service to 938 and 18,515 persons, respectively. Neither the Williamsburg nor the Suffolk proposals would serve any population or area that does not presently have at least five aural services.

24. In evaluating the effect of the two foregoing paragraphs, it is noted that in its 1963 Notice of Proposed Rule Making Re AM Station Assignment Standards (25 RR 1615, at 1626) the Commission stated:

"* * * we find it necessary to redefine our goal for AM in terms which will reflect, more specifically, our desire to bring about the most efficient possible dis-

tribution of the remaining unallocated facilities. Thus redefined, our objectives are expressed as follows, listed in order of descending priority:

"(*a*) To assign new and changed standard broadcast facilities at sufficient separations from co-channel and adjacent channel stations to preserve the service areas of existing stations and to enable new facilities to provide unimpaired service within their normally protected contours.

"(*b*) To bring a primary aural service to areas lacking such service, insofar as possible consistent with (*a*) above.

"(*c*) To bring a first local aural service to as many independent communities as possible, consistent with (*a*) and (*b*), above, and to make possible a maximum number of such assignments in the future.

"(*d*) To bring multiple local, aural services to as many communities as possible, consistent with our other objectives."

25. The choice must be made between the need of Williamsburg for an additional, competitive *local* outlet and the need for reception aural service to underserved areas to be provided by the Norfolk proposal. Admittedly, the choice in the instant case is a difficult one, and is reminiscent of the biblical story of David and Goliath. David is Williamsburg with its total coverage of 44,960 persons and Goliath is Norfolk with a total coverage of 963,351 persons. David would not serve any area or population that does not presently have at least five aural services. On the other hand, Goliath would provide a second aural service to 1,363 persons, a second AM service to 8,195 persons (including Williamsburg), and a third AM service to 15,121 persons (including Elizabeth City, North Carolina).

26. In view of the priorities established by the Commission, as set forth in paragraph 24 above, the biblical ending ascribed to David and Goliath cannot prevail. It is concluded that the need for an additional choice of aural reception service to underserved areas and population that is proposed by James River outweighs the need for an additional local outlet for Williamsburg.

27. Accordingly, upon the basis of the entire record in this proceeding, it is concluded that the public interest, convenience and necessity would be served by a grant of the application of James River Broadcasting Corporation, and a denial of the applications of Virginia Broadcasters and Suffolk Broadcasters.

Therefore, IT IS ORDERED that unless an appeal to the Commission is taken by any of the parties or the Commission reviews this Initial Decision on its own motion in accordance with the provisions of Section 1.276 of the Rules, the application of James River Broadcasting Corporation for a construction permit for a new standard radio broadcast station to operate on 1110 kHz with 50 kilowatts power, daytime only, utilizing a directional antenna, at Norfolk, Virginia, IS GRANTED, and the applications of Virginia Broadcasters and Suffolk Broadcasters for facilities on the same frequency at Williamsburg and Suffolk, Virginia, respectively, ARE DENIED;

IT IS FURTHER ORDERED that the grant of the application of James River Broadcasting Corporation is subject to the following conditions which are of a standard type for AM stations employing directional antennas:

1. A study, based upon anticipated variations in phase and magnitude of current in the individual antenna towers, after initial adjustment must be submitted with the application for license to indicate clearly that the inverse distance field strengths at one mile can be

maintained within the maximum expected operating values of radiation specified in the radiation pattern. Allowable deviation in phase and current determined from this study will be incorporated in the instrument of authorization.

2. A properly designed phase monitor of sufficient accuracy and resolution shall be installed in the transmitter room, and shall be continuously available as a means of indicating that the relative phase and current ratios of the antenna towers are maintained within the maximum allowable deviation values indicated in the authorization.

3. Field measuring equipment shall be available at all times and, after commencement of operation, field intensity at each of the monitoring points shall be measured at least once every seven days and an appropriate record kept of all measurements so made.

4. A complete nondirectional proof of performance, in addition to the required proof on the directional antenna system, shall be submitted before program tests are authorized. The nondirectional and directional field intensity measurements must be made under similar environmental conditions.

FEDERAL COMMUNICATIONS COMMISSION,
MILLARD F. FRENCH, *Hearing Examiner.*